

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

Karl Shaw,	:	
	:	
Plaintiff,	:	
	:	Case No. 2:18-cv-483
vs.	:	Judge Graham
	:	Magistrate Judge Vascura
City of Columbus,	:	
et al.,	:	
	:	
Defendants.	:	

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VIDEOTAPED DEPOSITION OF KIMBERLEY K. JACOBS

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Taken at Spectrum Reporting LLC
400 S. Fifth Street, Ste. 201
Columbus, OH 43215
May 20, 2019, 9:34 a.m.

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

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and

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ON BEHALF OF DEFENDANTS:

Columbus City Attorney's Office
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Columbus, OH 43215
By Richard N. Coglianese, Esq.

ALSO PRESENT:

Michael Lane - Videographer
Karl Shaw

Monday Morning Session

May 20, 2019, 9:34 a.m.

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S T I P U L A T I O N S

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It is stipulated by counsel in attendance that the deposition of Kimberley K. Jacobs, a Defendant herein, called by the Plaintiff for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

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(Original exhibits returned to Mr. Gittes.)

1 THE VIDEOGRAPHER: The following
2 deposition of Kimberley Jacobs is being taken on
3 May 20th, 2019 at 400 South Fifth Street, Suite
4 201, Columbus, Ohio, in the case of Karl Shaw
5 verse City of Columbus, et al., in the United
6 States District Court, Southern District of Ohio,
7 Eastern Division, case No. 2:18-cv-483. The court
8 reporter is Mary Bradley and the videographer is
9 Michael Lane. This deposition is being recorded
10 by Spectrum Reporting LLC.

11 We're on the record at 9:34. Will
12 counsel please announce their presence.

13 MR. GITTES: This is Fred Gittes
14 representing the plaintiff.

15 MR. VARDARO: Jeff Vardaro for the
16 plaintiff.

17 MR. WALTON: Sean Walton for the
18 plaintiff.

19 MR. COGLIANESE: Rich Coglianese on
20 behalf of defendants City of Columbus and Chief
21 Jacobs.

22 MR. GITTES: And for the record,
23 Officer Shaw is present.

24 - - - - -

1 KIMBERLEY K. JACOBS

2 being first duly sworn, testifies and says as
3 follows:

4 CROSS-EXAMINATION

5 BY MR. GITTES:

6 Q. Would you tell us your name, please.

7 A. Kimberley K. Jacobs.

8 Q. And given what this case is about, is
9 it all right if I refer to you as Chief?

10 A. Certainly. Retired.

11 Q. Chief, I imagine, but I want -- don't
12 want to rely on my imagination, you've been in
13 depositions before?

14 A. I have.

15 Q. About how many times would you say?

16 A. Someplace between 10 and 20, I would
17 assume.

18 Q. Were any of those in cases involving
19 you personally?

20 A. Yes.

21 Q. How many of them?

22 A. I have no idea.

23 Q. Were all of them related to your work
24 as a police officer?

1 A. Yes.

2 Q. All right. Did any of them involve any
3 form of claim related to discrimination or
4 retaliation?

5 A. Possibly. I don't -- I don't recall.
6 I mean, the allegations are about my role as
7 chief, and so sometimes that might have been part
8 of the allegations, but I don't recall
9 specifically.

10 Q. Well, I hate to take the time, but it
11 would be helpful if, as best you can remember, you
12 let us know the earliest or oldest case that you
13 can recall involving you.

14 A. I don't know. I mean, I was in law
15 enforcement for 39 years. And I'm not sure. Are
16 you talking when I've been personally sued, or are
17 you talking about when I've been personally
18 accused of some particular action?

19 Q. Let's just take it personally sued
20 first, keep it simple. First time you can
21 remember. I'm asking you for whatever you can
22 remember.

23 A. I don't know. I was chief for seven
24 years. Before that, I might have been deposed for

1 some other reason, but I would assume it was in
2 the last seven years, but I can't remember a
3 particular case.

4 Q. Okay. Were -- and that's very helpful.

5 Have you -- do you -- sitting here
6 today, as best you can remember, were you ever
7 sued before you became the chief? You?

8 A. Named in a lawsuit?

9 Q. Named in a lawsuit, correct.

10 A. The potential is there. I can't recall
11 a particular case that I would have been named in
12 prior to being chief.

13 Q. Okay. Were you -- did you do law
14 enforcement work outside of Columbus?

15 A. No.

16 Q. Okay. Do you recall -- and I'll break
17 it down timewise -- any case that involved
18 allegations based on your conduct as a police
19 officer in Columbus? I'm focusing before you were
20 chief. Any case before you were chief that was
21 based in part or whole on your conduct or alleged
22 conduct as a police officer?

23 A. I don't recall any such case.

24 Q. Okay. Prior to your being chief, did

1 you ever have a judgment against you in any case?

2 A. I'm not aware of any.

3 Q. Okay. Prior to becoming chief, was any
4 case settled by the city that involved in whole or
5 part allegations related to your conduct as an
6 officer?

7 A. None that I am aware of.

8 Q. Fair enough. Now, let's focus on the
9 years after you became chief. You became chief in
10 '79; is that right?

11 A. No. 2012.

12 Q. 2012, yeah.

13 You became a police officer sometime in
14 the '70s?

15 A. October of 1979 I joined the division.

16 Q. Okay. Since you were the chief in
17 2012, can you remember any case in which claims
18 were made against you personally, excluding this
19 lawsuit --

20 A. I know --

21 Q. -- from your behavior as chief or your
22 authority as chief?

23 A. I know that I have been named in
24 lawsuits personally and professionally, but as far

1 as my own behavior, no. Most of the time it's for
2 behavior that somebody else has done under my
3 tenure as chief.

4 Q. Okay. How would you classify this
5 case? Is it personal or is it what you just
6 described?

7 MR. COGLIANESE: Objection. Go ahead
8 and answer.

9 A. I don't recall that there's a specific
10 allegation against me for a certain behavior of
11 mine, other than the failure to take a particular
12 action, I believe. But I don't -- I don't recall
13 any specific behavior that I have been accused of
14 in this particular lawsuit.

15 Q. Okay. That's -- I'm just trying to get
16 an understanding of what you meant when you
17 described. So this is -- this case, your view of
18 it is it's not a suit against you because of your
19 conduct, it's more related to your status as the
20 chief and your responsibility --

21 A. That's --

22 Q. -- for others?

23 A. That is the way that I understand it.

24 Q. Okay. That's fair enough.

1 A. I haven't reviewed any of the paperwork
2 lately, so I --

3 Q. Okay. When you -- so you don't recall
4 any of the specific cases since you became chief
5 in which you were sued either in your official
6 capacity or personally?

7 A. Well, I -- are you talking about suit
8 or depositions?

9 Q. Suit.

10 A. I know that there's a number of
11 lawsuits with my name on them. I can't name them
12 all. I know that there's some pending ones and
13 then there's some others that I believe had gone
14 to court. What -- what --

15 Q. I mean, do you remember any of them?

16 A. Federal? State?

17 Q. Any.

18 A. I know that I was sued -- well, by
19 Officers Zimmerman and Lazar --

20 Q. Okay.

21 A. -- that is still pending. I know that
22 there's a lawsuit that's been filed by Lieutenant
23 McFadden --

24 Q. Okay.

1 A. -- in state court. I'm not sure how
2 far it went, but Representative Kent, I think
3 filed a suit against me. I've been named in a
4 number of -- of suits involving the use of deadly
5 force. The family of Henry Green. The family of
6 Tyree King. The family of the man who was shot on
7 the east side in 2012. So there's probably a
8 number of those cases. My name is almost always
9 on the lawsuits involving the use of deadly force.
10 So there might be a multitude of those. I just
11 don't know all of them.

12 Q. Have any of the cases you've described,
13 and I'm not trying to cut you off, but involved
14 claims of discrimination?

15 A. Yeah, the one from Lieutenant
16 McFadden --

17 Q. Okay.

18 A. -- I believe includes a claim of
19 discrimination. Some of the deadly force ones
20 might, but --

21 Q. Yeah, I'll put those aside.

22 A. Okay.

23 Q. I understand that.

24 You mentioned two other officers who

1 had a case pending?

2 A. Zimmerman and Lazar.

3 Q. What's that about?

4 A. Good question. They were accused of
5 misconduct while on duty and they felt that
6 internal affairs had mishandled the evidence. And
7 in that particular case, I made a decision not to
8 include the evidence that was under question. And
9 so I think that -- I don't know that it involves
10 discrimination. I think it's more of an evidence
11 kind of a thing. But I don't know if there was a
12 gender thing involved in that particular one or
13 not. I don't -- I don't think so.

14 Q. Any others that you can recall sitting
15 here today where you were -- you were named while
16 you were chief? Let's exclude use of force cases.
17 Mainly interested in employment cases.

18 A. There might be others, I don't know.
19 I've disciplined a lot of officers and they might
20 have filed a suit. You know, a lot of times the
21 lawsuits are handled by the city attorney's office
22 and I may or may not have much of a role in them.
23 Some of them are settled right away, so...

24 Q. Do you recall any specific suit -- any

1 suits that you were specifically named in either
2 personally or as chief that either went to trial
3 and resulted in a judgment against the city or
4 you? Let's do that first.

5 A. I --

6 Q. While you were chief?

7 A. I don't know the time period, but I
8 know that some officers in the campus area were
9 accused of excessive force. There may or may not
10 have been an allegation of discrimination. And it
11 did go to court. And this is the Hines case. It
12 did go to court. And the ruling was that one of
13 the officers used excessive force and there was a
14 finding against him. The other officers were not
15 found to be guilty of excessive force. I believe
16 there was a ruling that the city owed \$30,000 or
17 something in court costs or lawyer's costs, I'm
18 not sure which. I think the city tried to fight
19 back on that ruling and lost, I think.

20 I think there was another settlement
21 case with an officer that punched somebody in the
22 face, broke his jaw, and so that was a settlement.
23 It wasn't a court decision.

24 Q. Okay.

1 A. But as far as I know, that is the only
2 one that went to court and had a ruling against
3 the city. I was not personally involved in that
4 particular case other than being chief.

5 Q. Now, let's ask the same question about
6 settlements.

7 A. I'm not even -- okay.

8 Q. Any settlements of cases while you were
9 the chief which either involved just the city or
10 other command staff or you?

11 A. There were a number of settlements.

12 Q. Do you remember any where you were
13 involved? You had been named?

14 A. Not specifically. Sometimes I'm named
15 and sometimes I'm not.

16 Q. No, I understand.

17 A. I -- I sometimes was involved in the
18 discussions about settlement, not always, but
19 sometimes just because it impacted whether or not
20 policies were violated or not, and I had an
21 opinion about that. But I don't know which ones
22 of those I was named in.

23 Q. Well, even if you don't know, can you
24 recall specific cases that got settled? Again,

1 I'm focusing, if I -- to make it clear, on
2 employment cases, not use of force cases.

3 A. Oh. As far as lawsuits, no, I don't
4 recall any specific one, because there's a -- you
5 know, in addition to the lawsuits, there's the
6 arbitrations that I go to, and so I can't recall
7 which ones were arbitrations and which ones were
8 lawsuits specifically. If you had a list, I might
9 be able to --

10 Q. Yeah, I was hoping --

11 A. I'm sure it's public record --

12 Q. -- you might have one in your head.

13 A. -- somewhere, right?

14 Q. It should be public record as far as I
15 know.

16 Now, something that's not necessarily
17 public record, have you had charges of
18 discrimination filed with the Ohio Civil Rights
19 Commission or the EEOC based on your allegations
20 of your conduct?

21 A. Yes.

22 Q. Okay. Tell me what you can remember of
23 those.

24 A. Well, the first one that I recall was

1 back in the 1990s. I was a commander at the
2 communications bureau, and there was a charge
3 filed against me by -- wow, I -- I think it was
4 based on my age, because they said who was under
5 40, and I really wasn't under 40, but I took it as
6 a compliment that they thought I was under 40.
7 But it was an age-based charge that I made a
8 decision about I think my recommendations for
9 promotion.

10 Q. Okay. Was that resolved or dismissed
11 or what happened with that?

12 A. I think there was a finding of no
13 probable cause.

14 Q. Okay. Any others?

15 A. Yeah, I know that there's been others.
16 I don't know any specifics.

17 Q. Okay. Do you remember any other
18 charges involving the Columbus Police Department
19 during a time you were chief where -- again,
20 employment related, in which probable cause was
21 found? Putting -- excluding --

22 A. This is --

23 Q. -- Officer Shaw's.

24 A. -- the only one that I'm aware of.

1 Q. Okay. So I've talked to you about
2 trials. Let's talk about depositions. You've
3 mentioned you have testified in depositions.
4 Could you give me a guesstimate of how many times
5 you've been deposed?

6 A. I said previously I think it's
7 somewhere between 10 and 20.

8 Q. Oh, okay. I missed that.

9 I thought you said something about a
10 hundred times. Is that trials? Have you
11 testified in a trial?

12 MR. COGLIANESE: Objection.

13 A. I didn't say anything about a hundred.

14 Q. Okay. How many times would you say
15 you've testified in a trial, criminal or civil?

16 A. Oh, very, very rarely. I was in a
17 civil trial as a police officer about a traffic
18 accident.

19 Q. You don't have to list what they were
20 about, I'm just curious --

21 A. Okay.

22 Q. -- how many times. And I know it's an
23 estimate.

24 A. In a trial, a criminal trial or civil

1 trial?

2 Q. Both.

3 A. Very few.

4 Q. So 10 times maybe, guesstimate?

5 A. Yeah, I would say less than that.

6 Q. Okay. Well, let's -- before I keep
7 going, because I've already been throwing
8 questions at you, I would just kind of like to go
9 over some procedures during the deposition for the
10 rest of the day.

11 I know you've been through them, but I
12 just want to make sure -- I don't know when the
13 last time you were deposed was.

14 First of all, I will probably
15 necessarily be asking you most, if not all, the
16 questions today.

17 A. Okay.

18 Q. Do you understand that if I ask you a
19 question and you don't understand it for any
20 reason, that you can tell me you don't understand
21 it and I will try to clarify the question or
22 rephrase it until you're -- you feel you can
23 answer it?

24 A. I do.

1 Q. And will you try to do that for us
2 today?

3 A. (Indicates affirmatively.)

4 Q. And it's better if you speak.

5 A. Correct.

6 Q. Okay. If I -- if you do answer a
7 question that I've asked you and you don't
8 indicate that you're confused or don't follow the
9 question, I'm going to assume that you've
10 understood it unless you tell me otherwise. Fair
11 enough?

12 A. I agree.

13 Q. Okay. This is not a memory contest. I
14 know many, many people who have better memories
15 than me, so I know what it's like to try to
16 remember things covering years. So do you
17 understand that as we go through today, if you
18 realize you made a mistake an hour later or any
19 time later, you forgot something or you got
20 something wrong, that you can interrupt me, even
21 in the middle of a question, to let me know you
22 realized you omitted something or you've
23 remembered something?

24 A. I understand.

1 Q. And will you do that for us as we go
2 through?

3 A. I will.

4 Q. This is going to be a full, long day.
5 It's not my intention to torture anybody,
6 including myself, so feel free to take a break or
7 let me know. I just ask that you don't do it in
8 the middle of a question.

9 A. I agree.

10 Q. All right. Are you on any medications
11 or other drugs that would affect your ability to
12 testify truthfully and accurately today?

13 A. No.

14 Q. Do you have any health problems that
15 would affect your ability to testify truthfully
16 and accurately today?

17 A. No.

18 Q. Do you know of any reason, personal or
19 otherwise, that you would not be able to testify
20 truthfully and accurately today?

21 A. No.

22 Q. Have you had a chance to meet with your
23 counsel, either your own personal counsel or the
24 city attorney's office about this case?

1 A. I have met with the city attorney's
2 office.

3 Q. And about how many times have you met
4 with them since it got filed? Again, a
5 guesstimate.

6 A. On this particular case?

7 Q. This particular case.

8 A. I would say less than a handful.

9 Q. Okay. And when was the last time you
10 met with them?

11 A. I believe it was before I retired, so
12 sometime before February.

13 Q. Okay. Did you review any records
14 before coming today?

15 A. I have reviewed a summary, but that's
16 been probably two or three months ago.

17 Q. Okay. When you say, "a summary," what
18 are you referring to?

19 A. Of the investigation of Eric Moore.

20 Q. Okay.

21 A. The summary.

22 Q. So you looked at a portion of the IAB
23 file called the summary? Is that what's it's
24 called?

1 A. Well, the investigation is quite
2 extensive, and I just reviewed the summary pages.

3 Q. Right. I mean, the file has a section
4 called --

5 A. Yeah.

6 Q. -- summary?

7 A. Summary of investigation, yes.

8 Q. Right. Had you read the IAB packet
9 when you were at the police department as chief?

10 A. I don't believe that I've ever read the
11 entire investigation.

12 Q. Okay. So, in general, when you get IAB
13 investigations, you don't read them in their
14 entirety?

15 A. Not at all. That's not what I
16 testified to.

17 Q. Okay.

18 A. This was an extensive investigation
19 that filled boxes, or a box. Generally I did
20 review most investigations from beginning to end,
21 but this one was quite lengthy. And what I
22 decided upon was departmental charges, not lesser
23 discipline, so, you know, I reviewed the parts
24 that I thought were pertinent to the charges that

1 were brought.

2 Q. So does the length of the IAB packet
3 determine whether you read the entire packet?

4 A. No, it's not the length.

5 Q. Okay. So what -- what -- during your,
6 was it 12 years or 13 --

7 A. As chief?

8 Q. As chief.

9 A. No, it was seven.

10 Q. Seven years. Okay. During your seven
11 years as chief, did you have -- how did you decide
12 which ones to read through and which ones not to?

13 A. I read through most of them entirely --

14 Q. Okay.

15 A. -- if it resulted in departmental
16 charges. I mean, many, many internal affairs
17 investigations never reach me. The ones that are
18 recommended for departmental charges are the ones
19 that are brought to me. And in general, I read
20 all of them. But based on my schedule and what I
21 felt I needed to know about a particular thing, I
22 would make a decision if I had to read something
23 cover to cover. And to the best of my
24 recollection, I don't recall reading this

1 particular investigation cover to cover.

2 Q. Okay. So if I'm understanding you
3 correctly, and please tell me if I'm not, most IAB
4 files that came to you, you did read them? Not
5 all of them, but most you actually did?

6 A. That is -- that is what I believe I can
7 accurately testify to, correct.

8 Q. And you particularly would make a
9 point, if I understood correctly, of reading those
10 where formal charges were recommended?

11 A. I generally didn't see internal affairs
12 investigations unless formal departmental charges
13 were recommended.

14 Q. Okay. I didn't follow that.

15 Maybe we should -- let me just kind of
16 have you explain for all of us, and anybody who
17 sees this depo, the way this works. I know there
18 are things called chain of command investigations?

19 A. Uh-huh.

20 Q. And I know there are internal affairs
21 bureau investigations. What determines -- can you
22 explain the difference and what the process is?

23 A. Sure. Internal affairs investigates
24 all citizen complaints. So if somebody calls in

1 and says an officer was rude or an officer took a
2 bribe, it goes to internal affairs, it's
3 investigated by internal affairs. That is a
4 citizen complaint if it comes from somebody
5 outside the division or even our citizen -- or
6 civilian employees by definition.

7 Internal affairs also investigates
8 allegations of serious misconduct that might be
9 leveled by internal members of the division of
10 police. So if a sergeant believes that an officer
11 was not turning in all of the property that was
12 required of them to do, serious, it would be sent
13 to internal affairs for investigation.

14 However, if an officer does something
15 more minor like fails to wear their hat, comes to
16 work late, that would be described as a chain of
17 command investigation, still an internal
18 investigation, but it's being conducted by the
19 chain of command. And so that would be conducted
20 generally by the immediate supervisor and then be
21 sent up.

22 In addition to that, if an officer uses
23 force, like a TASER, that's investigated by the
24 chain of command and sent up through the chain.

1 Depending on what the allegation is is somewhat
2 determinant of where that investigation's going to
3 be decided upon. So if a use of force is say
4 handcuffing and maybe with a minor injury, a
5 sergeant can sign off on a particular use of force
6 level.

7 However, a TASER needs a higher level
8 of chain of command review. And then most
9 investigations that would be of some type of
10 misconduct would be reviewed up through the deputy
11 chief of the particular officer involved. The
12 deputy chief, if they believe that the officer was
13 rude to somebody, they can approve a reprimand and
14 that would be the end of the investigation. I
15 would never see that particular investigation. It
16 would be sent to internal affairs, the discipline
17 would be issued and it would move on.

18 However, if the deputy chief reviewed
19 that and felt that the officer had say used
20 excessive force or had committed some type of
21 misconduct that rose to the level of serious
22 misconduct, critical misconduct according to the
23 contract, then the deputy chief would recommend to
24 me whether or not the officer should receive a

1 written reprimand or departmental charges.

2 And if it's a written reprimand, then I
3 can approve that. A piece of paper is issued,
4 goes in their file. If it's departmental charges,
5 then that gets sent to the professional standards
6 bureau lieutenants for review and -- just cause
7 review, and then they would tell me what they
8 think and then I could decide if I believe
9 departmental charges were appropriate.

10 And if so, then I would schedule a
11 hearing and bring the officer in and see what the
12 defense is basically. And then I would make a
13 recommendation of discipline that the officer
14 could either accept if it was a leave forfeiture
15 or I could recommend a suspension, which would
16 then be heard by the Director of Public Safety.

17 Q. Okay. Please bear with me, because I'm
18 not sure I quite fully understand all of that.

19 A. Okay.

20 Q. First of all, is there something called
21 an administrative investigation, or is that the
22 same as chain of command?

23 A. There's -- there's administrative and
24 criminal investigations.

1 Q. Okay.

2 A. So everything that's being conducted by
3 internal affairs --

4 Q. Chain of command?

5 A. -- chain of command that -- that is
6 something that we don't anticipate a criminal
7 charge for --

8 Q. Okay.

9 A. -- would be called an administrative
10 investigation.

11 But sometimes an allegation would come
12 in saying, I believe that this officer stole my
13 necklace or something along those lines, or raped
14 me. And depending on the situation, the evidence,
15 we might be able to pull body camera video and
16 immediately find out what happened and not conduct
17 a criminal investigation. But there are times
18 when we have to conduct a criminal investigation
19 of the allegation. And so that would be put into
20 the hands of either a detective or a supervisor.
21 And occasionally internal affairs has been charged
22 to do a criminal investigation as well.

23 So that's the difference. Criminal and
24 administrative are whether or not we anticipate

1 this particular investigation being looked at by
2 our legal advisers and/or the prosecutor's office.

3 Q. Prosecutor's office? Okay.

4 So if I -- please help me make sure I
5 have this right. Depending on whether something
6 is viewed as critical misconduct, serious --

7 A. Uh-huh.

8 Q. -- a sergeant or a lieutenant or one of
9 the other commanders in a chain of command can
10 investigate it, decide what to do about it or
11 make -- decide what to recommend to you should be
12 done about it, up to and including a written
13 reprimand or even charges?

14 A. Departmental charges?

15 Q. Huh?

16 A. You mean departmental charges?

17 Q. Departmental charges, yeah.

18 A. I would say that those decisions aren't
19 made in a vacuum. Generally if it's conduct of a
20 critical nature, there are discussions that are
21 being held as to, you know, to make sure that they
22 don't just issue a disciplinary action and not
23 look at it in a more serious light. Most of those
24 that would be considered for critical misconduct

1 would be sent to internal affairs for
2 investigation.

3 Q. Okay. But at the initial stage, this
4 is what I'm trying to understand, something's
5 happened, it's something more than not wearing
6 your hat, but it's, you know, the officer didn't
7 beat anybody up or -- as far as is alleged didn't
8 steal money from somebody, but there's an issue.
9 The initial judgment about whether it's a chain of
10 command matter is made by the sergeant or the
11 lieutenants involved?

12 A. Or commanders.

13 Q. Or commanders?

14 A. Yeah.

15 Q. Okay.

16 A. That's often the case, yes.

17 Q. And if they -- they feel that it isn't
18 what's -- I'll ask you more about the term, but
19 isn't critical misconduct or something serious,
20 the normal practice is they look into it, which
21 might involve some follow up by the sergeant or
22 somebody else in the chain and come up with a
23 recommendation?

24 A. Yeah. Unless it's one of those things

1 that internal -- you know, we have directives and
2 the directives say which things should be
3 investigated by internal affairs. So if it
4 doesn't fall into that particular one, then the
5 chains of command have some discretion over what
6 they investigate before it would be sent to
7 internal affairs.

8 Q. So other than those that are listed, do
9 you remember what that directive is or what it's
10 called?

11 A. I used to know the number. We changed
12 the numbers.

13 Q. All right.

14 A. It used to be 310, now it is in I
15 believe chapter 8 or 9, but it's --

16 Q. It's like a laundry list of --

17 A. Yeah.

18 Q. -- these go to IAB?

19 A. Correct. Correct.

20 Q. So if it's not in that list and it's
21 not what's viewed as critical misconduct, it goes
22 up. And then ultimately, if they're going to do a
23 serious -- what I use as serious, what level do
24 they have to get your approval if it's a chain of

1 command investigation, before they actually take
2 the action?

3 A. A deputy chief can decide that it's
4 going to go to internal affairs. They don't have
5 to get my approval.

6 Q. No, what I mean, at what level can they
7 actually issue the punishment? If it's short of
8 departmental charges, but they feel something
9 needs to be done, let's say like a written
10 reprimand?

11 A. So nobody can issue anything higher
12 than a DCC, which is the first formal level of
13 discipline, without getting my approval.

14 Q. Oh, okay.

15 A. So if it's a written reprimand or
16 departmental charges, they have to seek the
17 chief's approval.

18 Q. And then if it's something --

19 A. Unless it was based on progressive
20 discipline.

21 Q. So they don't have to get your approval
22 if there's been a prior discipline at a lower
23 level?

24 A. Correct. If they had received a DCC

1 and that was still able to be viewed within its
2 time period, we're allowed to progress a DCC
3 within nine months. They could progress it to a
4 written reprimand without seeking my approval.

5 Q. So there's a lookback --

6 A. Yes.

7 Q. -- of nine months and that --

8 A. Administrative use.

9 Q. An administrative use? Okay.

10 Now, if it's determined by the people
11 in the chain involved that this is a critical
12 misconduct, they just forward it over to IAB or do
13 they have to go through you for that?

14 A. It can go through the deputy chief or
15 it can come through me. There's -- a deputy chief
16 can approve it being sent to internal affairs
17 without my approval, so...

18 Q. So something could be investigated at
19 IAB and you wouldn't even know it's going on?

20 MR. COGLIANESE: Objection.

21 A. That is absolutely the case, because
22 I'm not aware of all the citizen complaints that
23 they receive. And, yes, there could be something
24 being investigated by internal affairs that was

1 sent there by the chain of command that I wouldn't
2 be aware of.

3 Q. Okay. And in your experience during
4 your seven years, would that include officer
5 complaints about serious misconduct of other
6 officers?

7 A. I would say that if it didn't ever rise
8 to the level that somebody chose to tell me, then,
9 yes, there's a possibility that an investigation
10 could have ensued and maybe no evidence was found
11 to support that, and I might not have ever been
12 advised of that. I did allow deputy chiefs who
13 were acting while I was gone to make some
14 decisions, so they could have, you know, been
15 investigated without any knowledge on my part,
16 yes.

17 Q. You mean initiated?

18 A. They could have been initiated,
19 investigated and/or closed without my knowledge.

20 Q. If you weren't there?

21 A. If I wasn't there or if it never got to
22 the level of discipline. If they investigated it
23 and nobody told me about it, then it could have
24 gone into the record books without my knowledge.

1 Q. Can you explain to us what critical
2 misconduct is?

3 A. Well, this is the subject of lots of
4 arbitrations. But it is conduct for which we
5 believe that a documented constructive counseling
6 level of discipline is not appropriate for. So
7 it's egregious behavior. It's something that
8 could damage our ability to trust the officer.
9 It's -- it's, you know, oftentimes it's, you know,
10 people say right away, like insubordination, you
11 know, is critical misconduct because you failed to
12 follow on order or something along those lines.

13 It's -- it's more this body of evidence
14 that we have over the years of what has been given
15 a DCC or counseling or written reprimands or more.
16 For many years there was a standing policy that an
17 accidental discharge was going to be a written
18 reprimand. So that's critical misconduct. You
19 know, firearm goes off even accidentally, we
20 consider that to be critical misconduct because of
21 the dangers that are associated with that.

22 But the division has -- has called some
23 things critical misconduct -- for some time,
24 police pursuits that went, you know, like 90 miles

1 per hour, 100 miles per hour were called critical
2 misconduct. That went to an arbitration and they
3 said no, it's not. So there's always been some
4 debate about what critical misconduct equates to,
5 and there is no bright line.

6 It's a feeling of what the chief at the
7 time believes is egregious enough to not reprimand
8 that person and only have that reprimand be on
9 their record for nine more months basically.

10 Something that we think should hold that officer
11 accountable to, you know, not repeating that type
12 of behavior for at least three years, if not more.

13 Q. So you mentioned insubordination. What
14 about lying during the course of an investigation
15 or -- to a superior officer?

16 A. What's the question?

17 Q. Is that critical misconduct?

18 A. Absolutely.

19 Q. Okay. Is -- what about discrimination?

20 A. I would -- I would consider most cases
21 of discrimination to be critical misconduct, yes.

22 Q. Do you -- and what about threats of
23 violence?

24 MR. COGLIANESE: Objection. Go ahead.

1 A. I would say that depends on the
2 circumstances.

3 Q. Okay. Why -- when would a threat of
4 violence not be critical misconduct in your mind?

5 A. What was the environment in which it
6 was spoken? Who was it spoken to? Was it being
7 told as a joke? Was it being told very seriously?
8 Was it with a weapon in hand? Was it -- you know,
9 did the opportunity, means and everything else
10 lead somebody to believe that it was actually
11 going to happen? Or was it imminent? You know,
12 officers hear threats against them every single
13 day and --

14 Q. From other officers?

15 A. No. From -- from the public.

16 Q. What about do you consider critical
17 misconduct for one officer to threaten another
18 officer with violent act?

19 A. I -- as I described, yeah, I believe it
20 all depends on the context.

21 Q. Okay. So I gather that if an officer
22 claims that they were just joking, under those
23 circumstances, it's okay to threaten another
24 officer with a violent act?

1 MR. COGLIANESE: Objection.

2 A. That's not what I testified to.

3 Q. No, I'm asking you.

4 A. Oh. No, it's not good enough to just
5 say I was joking. You know, we -- you would have
6 to understand what the circumstances were and --

7 Q. Well, you said if they have the
8 means --

9 MR. COGLIANESE: Chief, were you done
10 answering that question?

11 Q. I'm sorry. I didn't mean to interrupt
12 you. Go ahead.

13 A. There's a lot of context involved in --
14 in whether or not somebody says I was joking and
15 whether or not we believe that. So, no, I'm not
16 going to say that if they claim I was joking,
17 that's the end of it. It certainly depends on
18 evidence and context, what witnesses have to say,
19 whether there were witnesses and various other
20 things.

21 Q. And let me make it clear to you, I
22 don't mean to interrupt you, and if you're not
23 finished, just let me know. It's fine for Rich to
24 say it --

1 A. I understand.

2 Q. -- but I would rather have you just
3 tell me I wasn't done --

4 A. I understand.

5 Q. -- so I know you have more to say.

6 Also, I want to make sure you
7 understand that I, again, don't expect memories to
8 be perfect. So if you don't know something or you
9 don't remember, you can just tell me.

10 A. I understand.

11 Q. I don't -- I won't take it that you're
12 doing anything but telling me you can't remember,
13 all right?

14 A. I understand.

15 Q. Okay. You mentioned that one of the
16 factors you would look at -- you mentioned joking,
17 that's why I came back to it. You also said
18 whether they have the means. Now, when it comes
19 to officers, don't they -- unless they're
20 suspended, don't they always have the means to do
21 harm to somebody?

22 A. Well, when I said that, I meant are
23 they with the person that they are threatening?
24 You know, do they -- if they say I'm going to, you

1 know, do something and that isn't physically
2 within the realm of doing in the next minutes or
3 so, but it would take some, you know, time,
4 distance and thought to make it happen, that's
5 what I was referring to. But it doesn't make or
6 break the decision. It's just part of the
7 decision-making process.

8 And I don't consider officers to be
9 anybody -- any different. Everybody has access to
10 weapons. And whether we've suspended somebody or
11 not doesn't mean that they don't have access to a
12 weapon. So I don't ever consider somebody that's
13 suspended to be less of a threat, per se, than
14 somebody that hasn't been suspended.

15 Q. In criminal cases that you've been
16 involved with or that you know about, the fact
17 that somebody doesn't tell their intended victim
18 that they're going to, you know, beat them up or
19 kill them, but tells somebody else, is still
20 considered evidence of intent, isn't it?

21 MR. COGLIANESE: Objection. Go ahead.

22 A. If somebody made a threat towards
23 somebody, they could be criminally charged with
24 menacing, correct, whether they're there or not.

1 Q. Whether the target is there or not?

2 A. Correct.

3 Q. What were the -- what were the -- you
4 mentioned -- I asked you about discrimination
5 being critical misconduct. Do you -- you said
6 most forms. Can you exempt -- give me an example
7 of a form of discrimination that would not be
8 critical conduct?

9 A. I would say that -- speaking from
10 personal experience that there were a lot of
11 sexist comments made towards me in my career, and
12 whether or not they were brought to the attention
13 of management, they weren't always viewed as a
14 disciplinary action. So that's a form of
15 discrimination. And depending on the person who
16 heard that particular comment or whatever else, if
17 they chose to ignore it or not report it, then it
18 might not rise to that particular level of
19 discipline.

20 Some people say, I don't want anything
21 to happen. They report it, but they don't want
22 anything to happen. And so I would say that there
23 are times when -- when some things of a
24 discriminatory nature have occurred that don't

1 reach the point of critical misconduct for a
2 number of reasons. So it depends on, again, the
3 circumstances and, you know, the information that
4 we know.

5 Q. So is it -- was it your policy while
6 you were chief that if people didn't report sexist
7 or racist or other forms of discriminatory
8 comments, it would not be viewed as critical
9 misconduct?

10 A. Are you saying did I enact a policy of
11 that nature?

12 Q. No. I mean, is that -- is that what
13 you're telling me, that based on your own
14 experience and while you were the chief, if a
15 person like you experienced didn't report the
16 sexist comments or didn't report racist comments,
17 then later awareness of the comments by you or
18 some other managing officer, it would not be
19 critical misconduct?

20 MR. COGLIANESE: Objection. Go ahead.

21 A. Again, it would still matter on what
22 the particular situation is. I'm not -- is that
23 my phone?

24 Q. Yeah, I just couldn't figure out what

1 it was. I don't care now that I know what it is.

2 A. Okay.

3 Q. I'm sorry. I'm sorry, you were saying?

4 A. I can't make a blanket statement and
5 say that, you know, some discriminatory comment or
6 action wouldn't be critical misconduct. It all
7 depends on the circumstances. And, you know, I
8 certainly didn't have a policy that we were going
9 to ignore any of that.

10 I taught EEO and sexual harassment
11 classes to recruits for years and told them that
12 they need to make complaints of that. That they
13 don't ever need to suffer any type of
14 discriminatory behavior. I insisted that it be
15 taught in the first week of recruit class, because
16 I didn't want what had happened to me to happen to
17 them. So I feel very strongly about reporting
18 discriminatory behavior, and encouraged people to
19 report it. And also described how they can, you
20 know, address it.

21 So I wouldn't say there was any type of
22 policy during my tenure as chief that said, it's
23 not critical misconduct. But I will say that, you
24 know, each situation is judged on its own merits,

1 and that applies to practically everything, you
2 know, excessive force, you know, could be anywhere
3 from shooting and killing someone to putting
4 handcuffs on too tight. They're not going to
5 receive the same level of punishment.

6 Q. So if I -- are you done?

7 A. Yes.

8 Q. So if I understood what you said, a
9 failure of someone to report sexist, racist,
10 ageist or other kinds of conduct from other
11 officers, at least was a factor, as far as you're
12 concerned, in whether or not the racist, sexist or
13 ageist comment would be considered critical
14 misconduct?

15 A. How would I know about it if it wasn't
16 reported?

17 Q. Because someone said something to
18 somebody else, but the person to whom the comments
19 were directed or about whom it were made never
20 complained about it.

21 MR. COGLIANESE: Objection.

22 A. No, that is not what I testified to.

23 Q. Okay. Then explain to me what the
24 failure or decision of someone who is the target

1 of racist, sexist or ageist comments, how does it
2 matter whether they report it or fail to report it
3 themselves?

4 A. It's just information. It depends on
5 what the circumstances are.

6 Q. So can you give me an example of where
7 someone didn't report a racist -- you know, let's
8 say a racist slur and you factored in the fact
9 that they hadn't reported it in deciding whether
10 it was critical misconduct?

11 A. I can't give you an example of that.

12 Q. Okay. Now, just briefly in light of
13 your reference to the training. Tell me about
14 your -- your -- actually, I'm going to just kind
15 of switch totally, just to get it out of the way
16 real quickly.

17 Are you employed now since your
18 retirement?

19 A. I'm not employed by the City of
20 Columbus now.

21 Q. No. I mean employed at all?

22 A. I do not have any income besides the
23 pension that I receive.

24 Q. Okay. Are you doing any volunteer work

1 for any organization?

2 A. I -- I consider myself to be doing some
3 volunteer work for the Columbus Police Foundation.

4 Q. Okay. And what's the Columbus Police
5 Foundation?

6 A. It's a charitable group that supports
7 programs from the division of police. They have
8 been the supporters of buying tourniquets for
9 division members, of -- of providing the funds to
10 allow us to take five charter bus fulls of
11 division personnel to Washington, D.C. for a
12 three-day trip to visit the Holocaust Museum and
13 the African-American -- or the National African
14 American Museum of History and Culture for
15 learning experiences and how to prevent
16 discrimination.

17 They have also supported some of the
18 meals for some of our recruiting events and some
19 of our community dialogue events. What else have
20 they bought? They're also helping to raise funds
21 for us to maybe put together some type of an
22 engagement center maybe on wheels where we can
23 have better interaction with our community
24 members. So at this point in time, I've just done

1 a little bit of fundraising for them and continue
2 to stay in touch with our donors.

3 Q. And are you on the board?

4 A. No, I'm not.

5 Q. Okay. Any other organizational work
6 you're doing?

7 A. No.

8 Q. Do you have any plans or are you
9 involved in any discussions about becoming a
10 consultant related to police investigation?

11 A. I have already had discussions about
12 becoming a consultant, but I turned that
13 opportunity down.

14 Q. Okay. So at the present moment, you
15 have no specific plans regarding other kinds of
16 work, whether it's as a consultant, independent
17 contractor or employee?

18 A. I didn't say that.

19 Q. Oh.

20 A. I have been discussing with the
21 foundation whether or not they want to hire me
22 part-time as an executive director.

23 Q. Oh, okay.

24 Any other leads in the offering that

1 you're considering discussing?

2 A. Board membership.

3 Q. I'm talking about paid gigs at this
4 point.

5 A. Oh, no. No, paid gigs.

6 Q. Okay.

7 A. Other than that foundation executive
8 director possibility, but that's still --

9 Q. Okay.

10 A. -- being discussed and is --

11 Q. Do you have any family members who are
12 in law enforcement?

13 A. I do.

14 Q. And who are they?

15 A. My son Peter.

16 Q. And where does he do his work?

17 A. He's employed by the division of
18 police, Columbus Division of --

19 Q. Columbus Division of Police?

20 A. Uh-huh.

21 Q. Okay. And how long has he been a
22 police officer?

23 A. Since January of 2013.

24 Q. Okay. And what -- anybody else in the

1 extended family that's in law enforcement?

2 A. No.

3 Q. Okay. And what -- is your son on
4 patrol?

5 A. Yes.

6 Q. Okay. When you came on the department,
7 I believe we said earlier '79, I don't want to
8 assume anything, did you go to patrol after going
9 through the academy?

10 A. I did.

11 Q. And how long did you do patrol?

12 A. Until -- well, I -- as a patrol
13 officer, I was on the street until 1987.

14 Q. Okay.

15 A. And then I got promoted to sergeant,
16 and I was a patrol sergeant on the street for most
17 of '88, I believe. But then I got a job
18 inside still assigned to patrol, but in the
19 administrative office. And that was until late
20 November -- or I believe November of 1991 when I
21 became a lieutenant and I went back to patrol.

22 Q. What were you doing in the
23 administrative office for patrol?

24 A. Scheduling officers to fill the holes

1 for the vacancies that we had due to sickness or
2 vacation or training or whatever it might be. I
3 answered the complaint line for almost four years.

4 Q. Citizen complaint line?

5 A. The citizen complaint line, eight hours
6 a day, five days a week. I scheduled officers for
7 training purposes. I scheduled them for big
8 events, made sure that we had enough people
9 scheduled to go wherever we needed them to. I did
10 that for almost four years.

11 Q. And where were you assigned as a
12 lieutenant as patrol?

13 A. Initially on patrol, zone three. I had
14 a rotating shift. I had two nights on third
15 shift, Thursday and Friday, Saturday was
16 unassigned, and then Sunday and Monday was on
17 second shift. And I did that until early 2000 --
18 or early 1993 when I got a job on first shift for
19 the first time working for Deputy Chief Lanata as
20 his administrative lieutenant in charge of the
21 patrol office, and I was assigned to him. It was
22 still technically patrol, but it was in an office,
23 until late 1995.

24 Q. And then what happened?

1 A. And then I got promoted to commander,
2 and I went to the communications bureau. And I
3 was there until early 2001. And in early 2001, I
4 was assigned to internal affairs and stayed there
5 until I think April or May, maybe, of 2005. So I
6 was there for about four years.

7 Q. So you were the commander of IAB?

8 A. Internal affairs.

9 Q. For four or five years?

10 A. Yeah. And that was when we made the
11 whole reorganizational change from just
12 investigating serious misconduct allegations to
13 investigating all citizen complaints as well.

14 Q. Okay.

15 A. I implemented that change.

16 Q. And then what happened?

17 A. In 2005, I was assigned to patrol zone
18 four and -- as the commander. And that was
19 downtown, Short North, campus, Clintonville and
20 everything northwest Columbus. I was there until
21 mid 2006 when I was assigned to the training
22 bureau as their commander. And I was there for
23 three years till late 2009 when I was promoted to
24 deputy chief and I went back to patrol.

1 Q. So 2009 you're back on patrol as the --

2 A. Not on patrol, but in patrol.

3 Q. No, I mean assigned to patrol?

4 A. Yes. Yes. I was assigned to the
5 patrol east subdivision initially. And then when
6 we reorganized that, it was the patrol south
7 subdivision, until I think early 2011.

8 Q. When you became --

9 A. No.

10 Q. No. Where were you when you --

11 A. I became the administrative deputy
12 chief in 2011 and I was the administrative deputy
13 chief for about a year before I became the chief
14 of police.

15 Q. Okay. Now, let's talk a little bit
16 since you've mentioned the academy. Tell me about
17 your own training -- well, let me -- let me switch
18 it up. I'm sorry.

19 You were on the department when the POE
20 case went to trial, do you --

21 A. POER?

22 Q. Yeah. Right, POER. Police Officers
23 for Equal Rights?

24 A. I don't know what year that was.

1 Q. Okay. Do you remember the case?

2 A. I don't remember specifics. I remember
3 that POER was an employment group within the
4 division of police, Police Officers for Equal
5 Rights. I don't remember what -- what the case
6 was, you know. I was, I believe, maybe an officer
7 at that time.

8 Q. So just sitting here today, you don't
9 remember reading about it or hearing about it on
10 the department?

11 A. Oh, I can't say that, no. I --

12 Q. I'm just asking what you remember.

13 A. I believe it was allegations of
14 discrimination from --

15 Q. Right.

16 A. -- you know, against the division of
17 police. I know that -- and I don't know which
18 ones are which, because I know that
19 African-Americans sued the city for hiring
20 purposes and won that. I know that women sued the
21 city for discrimination in hiring and won that. I
22 coached a woman that got out of the academy and
23 immediately had seniority over me, because of the
24 back seniority that she had gotten, because she

1 had tried to be hired and was turned down.

2 And then I know that there were rules
3 in place -- in fact, before I got hired, we were
4 taking the entry test and there was a white list
5 and a black list, and we had to have enough
6 African-Americans on the list prior to starting a
7 class.

8 And then I know -- and I don't -- I
9 don't know if this was the POER case or not, but I
10 know that there were allegations about
11 discrimination in promotions, and that was I know
12 in the mid '80s, I believe, that that was
13 resolved. There were promotions that took place
14 prior to me becoming promoted to sergeant from the
15 list that were, I believe, a result of either a
16 settlement or win in a case. I just don't know if
17 that was the POER case, so -- but I know that we
18 promoted like 30 African-Americans, I believe, in
19 July of '87, I believe as a result of a lawsuit.
20 I just don't know if it was a settlement or if it
21 was some type of a decision from the court.

22 Q. Do you -- do you -- again, I'm just
23 asking you what you remember.

24 A. Uh-huh.

1 Q. Do you recall that the -- and I'll fess
2 up, I was involved in those --

3 A. I know.

4 Q. -- cases, so I remember them a little
5 better than most people. Do you recall that the
6 POE -- POER case also involved allegations of a
7 hostile work environment based on race? Did you
8 ever know that? Besides promotions?

9 A. It -- it might have been something that
10 I knew at the time.

11 Q. Okay.

12 A. I -- as I said, I don't remember the
13 specifics. You know, I remember the hiring and
14 promotion part being big factors. The hostile
15 work environment part I might have had some
16 knowledge of because I believe Officer
17 Stubblefield was involved in the lawsuit. And
18 while I was in the academy, I went on a ride-along
19 and apparently while I was at the substation,
20 somebody made some type of a threat against him or
21 is alleged to have made a threat against him, and
22 I got called into internal affairs, I believe
23 while I was still in the academy, to see if I had
24 heard anything about that.

1 So I would -- I would certainly
2 consider that investigation of hostile work
3 environment. I just don't know if it was related
4 to the lawsuit or not.

5 Q. Okay. And were you aware at any time
6 during the pendency of that case that another
7 issue that was litigated was about assignments?
8 Allegations that black officers were excluded from
9 certain units like SWAT and the detective bureau?

10 A. I don't recall having that recollection
11 as an officer. You know, you're kind of isolated
12 at times from what's going on. But I -- I do know
13 that a job description manual was created in the
14 late '80s because of inequities, if you will,
15 about how people got assignments. I don't know if
16 they were based on race or not.

17 I was asked if I wanted a job on first
18 shift, and I was like, I don't have the seniority
19 to get a job on first shift. And they're like,
20 yeah, but we want women on first shift. I'm like,
21 well, I'm going to wait until I have the
22 seniority.

23 So, you know, I know that -- that
24 people felt that there were inequities with regard

1 to assignments, and I believe that that was one of
2 the reasons why the job description manual became
3 a thing I think in 1989.

4 Q. Do you recall that as a result of that
5 lawsuit, the judge -- Judge Duncan at the time --

6 A. Yes.

7 Q. -- does that sound familiar? Issued a
8 number of orders, including the promotion that
9 you've mentioned, but also issued orders about not
10 Judge Duncan, actually Judge Graham later took
11 over the case, issued orders about creating an EEO
12 office and a whole new set of rules related to
13 assignments and other things. Do you recall that?

14 A. I don't recall that that was a result
15 of --

16 Q. Okay.

17 A. -- anything. I remember that it seemed
18 like all of a sudden we had an EEO office,
19 Mr. Apple was --

20 Q. Yep.

21 A. -- in charge of EEO, and I think
22 Mr. Wheeler. But I -- like I said, I don't recall
23 that it was specifically as a result of the
24 lawsuit or whether or not it was a settlement or

1 whether it was an agreement.

2 Q. Did you hear during these years I'm
3 talking about, that lawsuit was pending for quite
4 awhile if you remember?

5 A. I don't remember when it was filed --

6 Q. Okay.

7 A. -- or when it was settled, no.

8 Q. But did you hear police officers that
9 you were working with or around making negative
10 comments about the case or about the people who
11 filed the case?

12 MR. COGLIANESE: Objection. Go ahead.

13 A. Nothing specific, no.

14 Q. Okay. Did you hear people grumbling --
15 you know, when I say, "people," I'm talking about
16 officers being -- expressing, criticizing that
17 some individuals got promoted over them even with
18 less seniority as you experienced because of the
19 case?

20 MR. COGLIANESE: Objection.

21 A. Do I remember people express --
22 criticizing others for being promoted over them?

23 Q. Just expressing they were upset that
24 that was happening?

1 A. Again, I can't remember anything
2 specific. I -- I believe that, yeah, there
3 were -- you know, there was some resentment of
4 either POER as a group or some of the decisions
5 that were being made just because of people's
6 strong feelings about seniority.

7 Q. Okay. None of them were -- none of the
8 comments were about race; that blacks were using
9 the race card or taking advantage of their race to
10 get advantage?

11 A. I cannot remember anything specific
12 along those lines.

13 Q. One way or the other? Or are you
14 telling me you never heard anything like that?

15 A. I would say that I don't recall any --
16 anything specific at all. You know, people talked
17 about a lot of stuff in roll calls or whatever,
18 but I would say that -- and this is -- this is one
19 of the things that I have talked about for years
20 is that, you know, you surround yourself with good
21 people and you don't hear stuff like that. You
22 know, people didn't use profanity around me very
23 much because they knew that I didn't like it. And
24 so I wasn't privy to a lot of conversations. I

1 didn't get invited to the poker games that my
2 fellow officers attended. I didn't get invited to
3 a lot of social activities, because I was a woman
4 and they didn't want me hanging around, or I was a
5 goody two shoes and they didn't want me hanging
6 around or whatever. But I don't remember a lot of
7 discussion about resentment towards particular
8 individuals as much as just that feeling of -- of,
9 you know, seniority not being as big a factor.

10 I believe that there was a lot of -- of
11 discussion among the city and others about whether
12 or not seniority points were even going to be used
13 in the sergeant's test that I took, and that
14 delayed the final list, because they had said it
15 wasn't going to count, then they added it back in.
16 And I think that might have been related to the
17 lawsuits because those other promotions happened
18 in 1987 as well.

19 Q. Did you -- why did you decide not to --
20 I think you indicated you had a chance to get to
21 the first shift and you chose not to take it?

22 A. I did not believe that I had earned
23 enough seniority to get there. It was important
24 to me that -- that people didn't view me as a

1 female police officer, you know? I should be an
2 officer that does their job and does it well, and
3 I didn't want any special privileges coming to me
4 because I was a woman. And that was the reason
5 why the position was offered to me.

6 Q. And so I take it that you were
7 concerned that other women who might have chosen
8 otherwise might face that attitude from male
9 officers?

10 A. I wouldn't say that that was
11 necessarily part of my decision-making. It was
12 just it wasn't right for me.

13 Q. Okay. Well, I thought I understood you
14 to say that you didn't want officers to view you
15 as a woman police officer, and taking a position
16 because of a court order which contravened
17 seniority was one of the concerns you have is that
18 you would be viewed differently?

19 A. I don't remember testifying anything at
20 all related to a court order. I just decided that
21 I didn't want to get that assignment because I was
22 a woman.

23 Q. Okay.

24 A. It didn't have anything to do with

1 court orders or anything else.

2 Q. I gotcha.

3 A. Okay.

4 Q. But you didn't want to get -- you
5 didn't want to be viewed as someone who was --

6 A. Using my gender.

7 Q. -- getting -- of using your gender?
8 Yeah.

9 During the years from '79 into the
10 '90s, did you ever observe or hear racial epithets
11 at the Columbus Police Department?

12 MR. COGLIANESE: Objection. Go ahead.

13 A. By other division personnel or --

14 Q. Yes.

15 A. -- by -- I don't know. Potentially.
16 And, again, that would -- that would be -- was it
17 somebody repeating something that they had heard
18 or been told?

19 Q. It could be either in your presence or
20 someone repeating what they had been told, or
21 graffiti in the bathrooms or racist graffiti or
22 racist graffiti in the training academy, any kind
23 of things like that?

24 MR. COGLIANESE: Objection.

1 A. I don't recall anything specifically
2 like that.

3 Q. Okay. Do you recall anything not
4 specific at a -- that related to race and that was
5 negative about black personnel?

6 A. I can't say that I haven't, I just
7 don't remember that there were instances where
8 people were referring to African-Americans in
9 racially derogatory terms about other division
10 personnel. It could have happened in my presence,
11 but I don't -- I don't ever recall, you know, that
12 being something that happened.

13 It -- it seemed to me that -- I don't
14 know if it was because I wasn't included in some
15 things that they, you know, thought that maybe I
16 would tell on them if they used those kinds of
17 terms around me, because I had stood up for
18 myself. And maybe they thought that maybe they
19 shouldn't use those kinds of terms, but I can't
20 say that I -- I never heard those terms and
21 certainly might have investigated, not personally,
22 but might have investigated as, you know, the
23 commander of internal affairs other allegations to
24 that effect, but I just don't recall anything

1 specific.

2 Q. And when you mentioned that your
3 sergeant's promotion was delayed because of the
4 court -- you know, of the black officers ordered
5 to be -- you know, lists being created for
6 promotion of black sergeants --

7 A. I don't think that's what I testified
8 to.

9 MR. COGLIANESE: Objection.

10 Q. Oh, you didn't?

11 A. I think I testified to there was a
12 debate on whether or not they were going to add
13 seniority points to my list or not. And they put
14 out a list that had the rankings without seniority
15 points, and I was higher on that list. But they
16 decided then to put seniority points back in and I
17 sank a little bit down. I still got promoted in
18 the first group, but I don't know that that was
19 related to the lawsuit or not.

20 Q. So your promotion was not delayed?

21 A. I didn't say that.

22 Q. Okay.

23 A. I believe it was delayed, because I
24 think that there was debate and a slowness in

1 preparing the final list because of that question
2 of whether or not there were going to be seniority
3 points added to the list or not. And then
4 ultimately they were added. And there was a list
5 that existed prior to, so you would think that
6 that might have been the reason for the delay.

7 I just don't know if the delay was
8 caused by the lawsuit or the fact that 30 people
9 got promoted, I believe it was 30, you know,
10 months prior to the promotion ceremony. But like
11 I said, I just don't know what was going on behind
12 the scenes on all of that.

13 Q. But in terms of where you ranked in
14 scoring or when you were promoted didn't affect
15 you? I mean, it might have happened some weeks
16 later than expected, but you still --

17 A. The first time they promoted from the
18 list, I got promoted.

19 Q. Okay.

20 A. It was a very large group from people
21 that were on the list as well.

22 Q. During your years in patrol, did you --
23 did you hear white officers using racial epithets
24 at any time when they were making arrests or

1 talking to suspects?

2 MR. COGLIANESE: Objection. Go ahead.

3 A. I suppose the potential is there for
4 that.

5 Q. But sitting here today, you can't tell
6 me one way or the other whether you actually had
7 occasions when you heard that kind of language?

8 MR. COGLIANESE: Objection. Go ahead.

9 A. You're talking about almost 40 years
10 ago, and, no, I don't remember any particular
11 incidents where that occurred.

12 Q. And I take it you never reported such
13 an incident if you did hear it?

14 MR. COGLIANESE: Objection. Go ahead.

15 A. I don't recall ever reporting hearing
16 that kind of language being used towards a
17 suspect.

18 Q. Prior to being in IAB, but while you
19 were on patrol and an officer, did you ever report
20 another officer for misconduct? Not once you were
21 a sergeant, but before you were a sergeant?

22 A. I know that I reported a use of force
23 that I don't believe that the officer reported to
24 my sergeant. I was a witness. A guy -- this is

1 when we didn't have screens between the front seat
2 and backseat, so partners were required to ride in
3 the backseat. And the suspect in this particular
4 case went for my partner's gun, even though he was
5 handcuffed, and so my partner's struggling to
6 maintain control of his weapon. I got out, I'm
7 struggling to make sure that we get him under
8 control. We put out a 10-3, officer in trouble.
9 And another officer showed up.

10 And as we were dragging the guy out of
11 the backseat, this officer came up and kicked the
12 suspect in the face, and it was a big hubbub, you
13 know, because of the potential for my partner to
14 have been killed or myself. And I don't know if
15 the officer that kicked this guy in the face
16 reported it to his sergeant, but I reported it to
17 the sergeant and made sure that I gave my
18 statement to that effect. I don't know what
19 happened to that. It might have been determined
20 that it was within policy for all I know, because
21 the guy was definitely a threat, even though he
22 was handcuffed.

23 Q. I take it -- anything else that you
24 reported?

1 A. Not that I recall.

2 Q. And I take it you've explained why
3 you -- I -- at least I believe I recall you
4 testified that you had heard sexist comments
5 during your years on the department?

6 A. Yes.

7 Q. Did you ever report any of them?

8 A. Not officially, no.

9 And I have told the story many times in
10 my speeches and when I teach a class on sexual
11 harassment that when I was at the substation in
12 front of my entire crew basically at a table like
13 this, I was standing and one of my co-workers
14 walked up and pinched me on my butt and hey, Kim,
15 you losing weight?

16 And I was offended by him touching me
17 in such a private place. And I told him not to
18 ever touch me again. And oh, oh, I didn't mean
19 anything. And I said, just don't touch me again.
20 My sergeant was there, he witnessed it, or at
21 least could have, but he didn't ever say anything
22 to me about it, and I never made an official
23 complaint about it.

24 Q. Did you have other incidents of

1 inappropriate comments or touching?

2 A. Sexist comments, yes. There were other
3 sexist comments, including some that were made by
4 higher ranking people than me.

5 Q. Did you --

6 A. And I was discriminated against, in my
7 opinion, by higher ranking people.

8 Q. And did you report it?

9 A. I did.

10 Q. When?

11 A. To my boss.

12 Q. Who was?

13 A. At the time it happened, my boss was
14 Deputy Chief Tony Lanata.

15 Q. So this was later in your career?

16 A. This was in the '90s.

17 Q. Okay.

18 A. Yeah.

19 Q. Did anything happen?

20 A. No. The offending person was the chief
21 of police.

22 Q. Is that Joseph back then?

23 A. No, Jackson.

24 Q. Jackson? Okay.

1 Any -- any others after that?

2 A. I -- I believe that there have been
3 comments made about me being gay by some division
4 personnel. I was told by the FOP president that
5 there might be a vote of no confidence because I
6 was gay after I got promoted to chief. Apparently
7 that didn't happen, but I was told that somebody
8 was strongly opposed to the fact that I was gay
9 and promoted. So I know that comments about
10 gender and sexual orientation have been said about
11 me, but I -- I don't know how many. I don't know
12 when all -- you know, all of them occurred. But,
13 yes, I've been the recipient either directly or
14 indirectly of such comments.

15 Q. And in most of those instances, it
16 sounds like you did not make formal complaints
17 about them?

18 A. Correct.

19 Q. Okay. I gather as somebody who's done
20 EEO training, you've talked with people about why
21 they might not want to file complaints?

22 A. Can you explain what you mean?

23 Q. Black officers and women, why they
24 might be hesitant to file complaints about other

1 officers' racial or sexual comments?

2 A. The question is whether or not I have
3 discussed why they might be hesitant?

4 Q. Yes.

5 A. I wouldn't say that the training delved
6 too deeply into that. The training was mostly
7 that you shouldn't put up with discriminatory
8 behavior and that you should report it, here's the
9 different ways that you can report it. We
10 probably touched on, you know, whether or not you
11 decide to not report it and then the consequences
12 of that, but the consequences weren't ever
13 described as being more pro don't -- don't report
14 it.

15 Q. No, I -- and I'm sorry if I'm not being
16 clear. I'm not asking whether you ever
17 discouraged people.

18 A. Okay.

19 Q. I'm asking you: Do you as a woman and
20 a gay person understand why some gay people and
21 some women and some blacks would be very hesitant
22 about making a formal complaint about slurs,
23 comments, racist jokes, sexist jokes when they're
24 working with other officers on patrol or in other

1 dangerous assignments?

2 MR. COGLIANESE: Objection.

3 A. I understand why some people are
4 hesitant to report, yes. That's a variety of
5 reasons.

6 Q. Yeah. And they include concern about
7 retaliation, right?

8 MR. COGLIANESE: Objection.

9 A. I am sure that that is some of the
10 considerations that some people give to reporting
11 or not.

12 Q. Isn't another thing that you -- you
13 understand about some people in these situations
14 and the thought about yourself is you don't want
15 to be viewed as a black person or a woman, you
16 want to, as much as you can, just be seen as a
17 police officer?

18 MR. COGLIANESE: Objection.

19 A. I don't know that -- I mean, I -- I
20 guess you don't want people to think that you
21 complain about every little thing that happens to
22 you. But when it boils right down to it, what are
23 you going to stand up for? And the two things
24 that I thought were the most egregious that

1 happened to me, I dealt with very strongly in my
2 opinion. I didn't let it go unnoticed. I
3 addressed it.

4 The one that happened later on in my
5 career as a lieutenant and coming from the chief
6 of police, I demanded that what was being
7 determined be changed or else I would file
8 something more official, and it was changed.
9 They -- they gave me an order not to ride around
10 with the only other female lieutenant because it
11 looked strange, but all of the other male
12 supervisors were allowed to ride around together.
13 But it was just me and Lieutenant Kerins that
14 weren't going to be allowed to right around
15 together.

16 And I said, if you only order the two
17 of us not to ride in the same vehicle together,
18 you are individually singling us out because we're
19 women, and, you know, that needs to be changed.
20 Within 24 hours, the order went out that no
21 supervisors were allowed to ride around together.
22 So I didn't have to make any formal complaint
23 because the order was changed.

24 Q. Okay. My question is: What are some

1 of the reasons you understand that women or black
2 officers or officers with other differences might
3 not file a complaint?

4 MR. COGLIANESE: Objection.

5 A. There are -- there are a variety of
6 reasons why they might not. Retaliation is one of
7 them. Wanting to fit in is one of them. Wanting
8 to handle it themselves is one of them. You know,
9 not thinking it's a big deal is one of them or
10 whatever. But, yes, there's certainly a variety
11 of reasons why some people wouldn't make a formal
12 complaint.

13 Q. Now, when you have -- what training
14 have you had on EEO? As opposed to doing
15 training, what training have you had?

16 A. Whatever the city has required. I
17 instituted that we were going to do EEO training
18 on a regular basis when I was the chief, but we've
19 been accredited by the commission on accreditation
20 for law enforcement agencies since 1999. And part
21 of the practices, the standards that we meet are,
22 I believe it was either biennial or triennial
23 training required on EEO. So since 1996ish, I've
24 attended all of those trainings that were required

1 by the city. And then as chief, I required it to
2 be done more frequently.

3 And then -- that's within the division.
4 And then the city also instituted EEO training
5 that they required, I think mid managers or
6 commanders on up to attend as well, so what the
7 city's offered. Back in the day when Mr. Apple
8 was doing training, I went to all of that.

9 Q. So let's -- let's kind of focus on the
10 '90s. So you would have been what rank
11 starting --

12 A. I was --

13 Q. -- in 1990?

14 A. I was a sergeant in 1990. I got
15 promoted to lieutenant in November of '91.

16 Q. Okay. Let's start at '91. In '91, how
17 many times would you have had EEO training?

18 A. Whatever Mr. Apple might have done. I
19 do remember going to a class that was required of
20 all, I think mid managers, maybe on up, I'm not
21 sure which, that the city paid an outside trainer
22 to do. And it was the most insulting training
23 that I've ever taken part of.

24 The instructor did not control the

1 class. There were both fire and police
2 supervisors there. I was a lieutenant at the
3 time, so this is probably '92, '93, something like
4 that. And it was -- I believe it was either one
5 day or two days.

6 But the instructor had different
7 exercises, one of them was a long list of
8 leadership traits. And it said, is this a male
9 trait, female trait or both sexes? And had
10 everybody answer that. And then he asked people
11 to shout out which ones were male and which ones
12 were female. And the comments that were being
13 tossed out were amazingly sexist.

14 One said that, can you imagine a woman
15 having PMS in the war room making decisions about,
16 you know, what war plan we're going to have? Or
17 tramping through the jungle and needing to put a
18 tampon in? And another one was a chart that
19 talked about derogatory terms for ethnicity,
20 gender, race, religion. You know, it said, you
21 know, list these derogatory terms that have been
22 given for all these different things, and people
23 were just shouting out these terms.

24 And, you know, they said like Italian

1 and somebody would yell Wop. You know, and they
2 would say, Irish, and they would say, you know,
3 drunk, you know. And it was like this free for
4 all, just say what you're thinking. And the
5 instructor was encouraging some of this behavior
6 basically.

7 But they got to female and the way that
8 this was shouted out was, in particular, I believe
9 like said with some emphasis, not just Wop, but
10 cunt. And I took great offense to that particular
11 thing.

12 A number of the fire guys during the
13 break apologized for the other firefighters'
14 transgression, if you will. Some of the police
15 guys that, you know, weren't too sure that they
16 liked, you know, me being a lieutenant I think
17 even were like defending me, you know. So that
18 was EEO training, if you will, cultural
19 sensitivity training that had the actual opposite
20 effect. I left there feeling like the fire
21 department was a bunch of sexists.

22 Q. Did you complain about it?

23 A. I didn't make an official complaint to
24 anybody. I let people know how terrible I thought

1 it was. But it was mandated by either the chief
2 of police or maybe even above the chief of police.
3 It might have been something that Mr. Apple had
4 suggested and had the city hire for. I don't
5 know.

6 Q. Okay. Did subsequent trainings, it
7 sounds like you had them every year in the '90s
8 and going into the 2000s?

9 A. No, I wouldn't say that in the '90s.

10 Q. No? Okay.

11 A. I said as chief, after 2012 I asked our
12 training bureau to do EEO training every year.

13 Q. Okay. But I'm trying to find out: As
14 of the time you became the chief, you had been
15 through a few EEO trainings --

16 A. Oh, sure.

17 Q. -- a lot of EEO trainings, I mean, give
18 me --

19 A. Yeah, I mean --

20 Q. -- once a year or twice a year?

21 A. I -- I would have to go back and look
22 what the standard was at the time, but the
23 division became accredited for the first time in
24 1999, but it was a three-year lookback. And so,

1 you know, 1996, '97 we would have had to have EEO
2 training at least once every three years, if not
3 every other year.

4 Q. Okay. And those trainings were all day
5 or half a day or --

6 A. No, it could have been an hour or two.

7 Q. Okay.

8 A. It didn't mandate how long, it just
9 said you have to have EEO training. In addition
10 to that, I went to, you know, outside training
11 like in the late '90s for the police executive
12 leadership college. And I don't remember
13 specifically, but I'm sure that some of the
14 outside training courses that I attended also
15 talked about EEO issues.

16 Q. Okay. Did you save the materials from
17 any of those courses or does the department have
18 them that you know?

19 A. I might still have some. I know that
20 when we reorganized internal affairs, we had paid
21 for instructors from -- there were like
22 contractors for IACP that came in and did 40 hours
23 of training. And I believe that they might have
24 conducted some training on how to conduct EEO

1 investigations so, you know, at least on a
2 periphery there was discussion about EEO stuff and
3 maybe sexual harassment at that time, too.

4 Q. Could you look and see what you have
5 and let Rich know --

6 A. Sure.

7 Q. -- what you have? Okay.

8 MR. COGLIANESE: Hey, Fred, can we take
9 a break at some point?

10 MR. GITTES: Oh, no, we're not allowed
11 to take breaks.

12 MR. COGLIANESE: We've been going for
13 about an hour and 45.

14 MR. GITTES: At what point?

15 MR. COGLIANESE: Within the next 15 or
16 so.

17 MR. GITTES: Let's just take it now.

18 THE WITNESS: Yeah, that's fine.

19 THE VIDEOGRAPHER: We are off the
20 record. The time is 11:13.

21 (A recess is taken.)

22 THE VIDEOGRAPHER: This marks the
23 beginning of media number two. We're back on the
24 record. The time is 11:22.

1 Q. Chief, I think we were just talking
2 about EEO training. And my impression is that it
3 doesn't happen every year; every other year maybe,
4 sometimes every three years depending on what time
5 period we're talking about historically?

6 MR. COGLIANESE: Objection.

7 A. Yeah, I don't have the documents in
8 front of me to show what has been offered within
9 the division. But, yes, there are times when
10 we've done it every year for the last number of
11 years and then there are times where it wasn't
12 happening as frequently.

13 Q. And in more recent years has the
14 training been multiple days, a day or hour-,
15 two-hour programs?

16 A. I would say it comes in less than a
17 full day of -- of the segment. I believe the city
18 offered two hours. I think the division has been
19 either one or two hours out of it.

20 Q. Do you go -- oh, I'm sorry. I didn't
21 mean to interrupt.

22 A. What's the question?

23 Q. Do you go still?

24 A. Absolutely.

1 Q. Okay.

2 A. I attended all the training that was
3 mandatory.

4 Q. So you've had training in retaliation,
5 what that means legally?

6 MR. COGLIANESE: Objection. Go ahead.

7 A. I'm sure it was discussed in at least
8 some of those offerings.

9 Q. And you've heard of the phrase tangible
10 -- a tangible employment action? Have you ever
11 heard that phrase before?

12 A. Potentially.

13 Q. Can you tell me what it means to you?

14 MR. COGLIANESE: Objection.

15 A. In legal terms I don't know --

16 Q. No, I mean just --

17 A. -- the words. But tangible would be
18 something that is, you know, you can see what
19 happened. You know, it's not how somebody felt,
20 it's somebody -- somebody didn't get promoted or
21 something like that.

22 Q. Okay. And independent of federal and
23 state law prohibiting discrimination and
24 retaliation, CPD has its own policies prohibiting

1 discrimination, does it not?

2 A. Yes.

3 Q. Okay. And do you expect your officers
4 to abide by all three, policy, state law, federal
5 law?

6 A. Yes.

7 Q. And I'm gathering from how you've
8 described your own experience, you take those
9 policies and laws seriously?

10 A. I do.

11 Q. And you expect your officers to do the
12 same?

13 A. I do.

14 Q. And are -- while you were chief, did
15 you expect your commanders, sergeants, lieutenants
16 to enforce policies and laws concerning
17 discrimination and retaliation?

18 A. Yes. Well, as -- within their power
19 to.

20 Q. Yes. Sure.

21 A. I mean, they -- they didn't get to make
22 a lot of decisions about what enforcing means, you
23 know, but as far as reporting it or investigating
24 it --

1 Q. Right.

2 A. -- yes.

3 Q. Well, nothing gets enforced unless
4 somebody reports it or somehow else it's
5 discovered, right?

6 A. Correct. Correct.

7 Q. So it is a priority for your officers
8 if they're aware of discrimination to report it?

9 A. Yes.

10 Q. And if individuals become aware, let's
11 say a lieutenant feels a commander is
12 discriminating against somebody else, not the
13 lieutenant, they're obligated to report it, aren't
14 they?

15 A. If they believe that a rule violation
16 has occurred, correct, their required to report
17 it.

18 Q. Well, and besides a rule violation,
19 violation of federal and state discrimination
20 laws --

21 MR. COGLIANESE: Objection. Go ahead.

22 Q. -- should be reported if they're aware
23 of it?

24 MR. COGLIANESE: Objection.

1 A. Yes. So our policies closely match the
2 laws and, you know, it's to follow policy and the
3 law, so -- as they understand the law.

4 Q. Okay. Well, they get training on the
5 law --

6 A. Correct.

7 Q. -- not just the policy, right?

8 A. Yes.

9 Q. Would -- I don't want to go back to our
10 earlier discussion about your practices as
11 regarding IAB investigations except that I do want
12 to understand one thing. Do all IAB
13 investigations have summaries?

14 MR. COGLIANESE: Objection.

15 Q. I mean while you were chief anyway?

16 A. I can't think of an actual
17 investigation that wouldn't have a summary. And
18 it would depend on what you call an investigation.
19 There are complaints that get called in that
20 aren't an actual allegation of misconduct. It
21 gets written up and it's --

22 Q. I'm going to interrupt you --

23 MR. COGLIANESE: Hold on.

24 Q. -- if it's okay. I don't want us to

1 get sidetracked, because I want to focus now as
2 much as I can on this case.

3 A. Okay.

4 Q. I'm only --

5 MR. COGLIANESE: But if you need to
6 finish your answer, by all means.

7 A. An actual investigation generally would
8 have a summary.

9 Q. Okay. And was it your practice during
10 your years as chief to at least read the summaries
11 if the case was coming to you for some kind of
12 decision or action?

13 A. Yes.

14 Q. Okay. And then sometimes you would
15 read more?

16 A. Yes.

17 Q. Were there cases where you would read
18 the summary and based on reading the summary, you
19 might spot check a particular exhibit or a
20 particular interview?

21 A. Yes.

22 Q. Was the Moore case one of those? Eric
23 Moore?

24 A. What's the question?

1 Q. Where you read the summary and spot
2 checked individual parts of the investigation?

3 A. In that particular case, I don't even
4 know if I read the entire summary prior to that.
5 I -- when I reviewed it more recently, because
6 this case was brought to me years ago, I saw
7 things in the summary more recently that I don't
8 recall having seen before. But I don't know if
9 there were things in that particular summary that
10 I then referenced an actual transcript or
11 something like that. I have no idea if I did that
12 or not. I -- this was years ago.

13 Q. Again, it's okay to just say you don't
14 remember.

15 Have you read the actual complaint,
16 lawsuit in this case?

17 A. I don't know.

18 Q. Don't remember one way or the other?

19 A. I don't remember one way or the other.

20 Q. Okay. You -- we talked about this
21 earlier, there was a probable cause finding by the
22 Ohio Civil Rights Commission. You do remember
23 that, right?

24 MR. COGLIANESE: Objection. Go ahead.

1 A. I remember that there was an initial
2 finding of no probable cause.

3 Q. Right.

4 A. And then there was a reconsideration.
5 And then it came back with a finding of probable
6 cause. And that we then had an attempt at
7 mediation, I believe mediation or settlement, I'm
8 not sure which.

9 Q. You mean -- never mind, go ahead.

10 A. And then a lawsuit was filed.

11 Q. Okay. Okay.

12 A. I think that's the order.

13 Q. Did you attend the mediation you're
14 talking about?

15 A. I went to the office in the state
16 office tower of the Ohio Civil Rights Commission
17 and there was a mediator there, Pam Gordon was the
18 city attorney, and I'm not sure who else was
19 present, but --

20 Q. Okay. Have you -- did you read the
21 reconsideration decision by -- that was issued by
22 the commission?

23 A. I don't recall.

24 Q. Okay. Have you ever -- during the time

1 you were chief, did you ever order a review or
2 analysis to determine if there were disparities in
3 the discipline issued to black or -- based on race
4 in chain of command and IAB investigations?

5 MR. COGLIANESE: Objection. Go ahead.

6 A. Not that I recall.

7 Q. Have you ever -- have you heard during
8 your years as the chief, any complaints from
9 officers, particularly black officers, that I --
10 that -- about disparate discipline? When I refer
11 to "disparate discipline," do you understand what
12 I'm referring to?

13 A. I do.

14 Q. Okay. Did you hear from any office --
15 black officers during your years as chief any
16 complaints about disparate discipline?

17 A. Yes.

18 Q. Okay. I am as -- one last thing I am a
19 little unclear on is: Does the internal affairs
20 bureau as part of its responsibilities for
21 investigating employment complaints within the
22 division, does it investigate EEO employment
23 complaints?

24 A. It is charged with investigating those.

1 We have -- we have now in the last number of years
2 asked for our human resources personnel to assist
3 with some of those investigations, and at times
4 have consulted with the human resources department
5 and/or their personnel and/or the Director of
6 Public Safety's offices, HR manager -- officer --
7 HR officer about some EEO investigations.

8 Q. Do you know Ms. Van Pelt?

9 A. I do.

10 Q. And how long have you known her?

11 A. Probably since she's been employed.
12 Don't know if I knew her before that. She used to
13 attend the church that I attend, and so there's a
14 possibility that she -- that I met her at church
15 rather than at work, but I know at least since
16 she's been employed there.

17 Q. Were you -- were you involved in her
18 hiring?

19 A. Not personally.

20 Q. Okay. And do you consider her a
21 friend?

22 A. Yeah.

23 Q. Okay. Do you socialize at times
24 outside of work?

1 A. She lives in my neighborhood, so, you
2 know, there are times when I stop while I'm
3 walking the dogs and say, hi, how are you doing?

4 Q. Okay.

5 A. Have a conversation. She doesn't
6 attend my church anymore.

7 Q. Okay. How about Ms. Guyton?

8 A. What's the question?

9 Q. Do you know that person?

10 A. Absolutely.

11 Q. How long?

12 A. Since probably 1995 or '96. She was
13 the union representative for the dispatchers when
14 I became the commander at the communications
15 bureau. And so whenever I started dealing with
16 the union matters back then is when I would have
17 met her.

18 Q. And what's -- what was -- what's her
19 status now?

20 A. She is the HR officer for the
21 department of building and zoning services.

22 Q. What was her last position in the
23 department?

24 A. HR manager over the human resources

1 bureau.

2 Q. So was she over Van Pelt?

3 A. Yes.

4 Q. How many other people are in HR at CPD,
5 at least while you were chief?

6 A. There was the HR manager and then two
7 HR analysts, I believe, and then several others
8 that work in employee benefits. And just the
9 personnel office, I don't know, maybe like eight
10 or nine, and then the industrial hygienist. So
11 maybe 10ish at the most.

12 Q. Okay.

13 A. Because I don't know if you -- payroll
14 is actually under the business office.

15 Q. Okay. So Ms. Guyton is -- were you
16 friends?

17 A. Yes.

18 Q. Socialize outside of work sometimes?

19 A. Yes.

20 Q. Okay. When you say that HR would get
21 involved with IAB investigations of EEO matters,
22 did they actually sit in on interviews, conduct
23 interviews for or with the IAB sergeants or you --

24 A. For --

1 Q. How did they get involved?

2 A. -- investigations of officers --

3 Q. Yes, officers.

4 A. -- or investigations of civilian
5 employees?

6 Q. Officers.

7 A. I don't think that they participated in
8 the interviews.

9 Q. So they would just be consulted about
10 questions?

11 A. Asked to review information, asked to
12 determine whether or not they felt like the
13 complainant and the -- you know, the person
14 accused should be separated, you know, to follow
15 what the recommendations are from U.S. EEOC with
16 regard to leaving people in the same area.

17 Q. The internal affairs bureau, you
18 indicated you made changes to it. Can you very
19 briefly tell me what changes you made?

20 A. Well, I was implementing the changes to
21 internal affairs, if that's what you mean.

22 Q. Implementing what changes?

23 A. Are you talking about back in the 19 --
24 or 2001 time period?

1 Q. No, I thought -- maybe my confusion. I
2 thought you were talking about as chief?

3 A. No, I don't think so. When I
4 referenced reorganizing internal affairs, that was
5 back in 2001 --

6 Q. Oh.

7 A. -- when the city made a lot of changes
8 based on the lawsuit that had been filed --

9 Q. Yeah.

10 A. -- and the Department of Justice
11 investigation.

12 Q. Okay. Thank you.

13 When did you first meet -- or did you
14 ever personally meet Eric Moore?

15 A. I've run into him throughout my career.

16 Q. Okay. Did you ever --

17 A. I don't know when the first time was.

18 Q. Did you ever work with him?

19 A. I don't recall any assignment where we
20 would have been in the same unit, no.

21 Q. You were never his direct supervisor?

22 A. No.

23 Q. And as far as you recall, he was never
24 your direct supervisor?

1 A. No.

2 Q. Okay. How about Lieutenant Brust?

3 A. What's the question?

4 Q. Do you know him?

5 A. Oh, yeah.

6 Q. Have -- do you socialize with him
7 outside?

8 A. No.

9 Q. Okay. How -- when -- as best you can
10 recall, when would you have first had met or had
11 dealings with Lieutenant Brust?

12 A. Whenever our paths would have crossed
13 with regard to assignments. He works a lot of
14 special duty, so I might have run into him at a
15 football game or something like that first. I
16 don't know when the first time was, but I don't
17 remember ever working in the same unit or maybe
18 even bureau. Maybe -- well, no, he might have
19 been in the training -- no, I don't think so. So
20 I don't --

21 Q. Okay.

22 A. He might have been in my subdivision at
23 some point in time, but I don't --

24 Q. Never directly supervised or

1 supervisee --

2 A. Not to my knowledge.

3 Q. -- or coordinating together?

4 A. Correct.

5 Q. Same thing about Sergeant Williams, do
6 you know him? How do you know him? Did you
7 work --

8 A. Sergeant Doug Williams?

9 Q. Doug Williams, yes.

10 A. Yes, I know him. I don't believe that
11 I've ever worked with him in the same unit peer to
12 peer or as supervisor.

13 Q. Okay. You don't consider him a
14 personal friend outside of work?

15 A. No.

16 Q. Okay. Did you ever have occasion to
17 discipline him?

18 A. Yes.

19 Q. And did he raise any disagreements with
20 you about the discipline?

21 A. Yes.

22 Q. Okay.

23 A. He took at least one of the decisions
24 that I had to arbitration.

1 Q. Okay. How about Gary Cameron, how long
2 have you known him?

3 A. Well, I know that he worked at the
4 training academy when I was there. That might
5 have been our first time working together. That
6 would have been in 2006? Yeah, 2006.

7 Q. Was he your supervisor there?

8 A. No. I was his.

9 Q. Okay. And other than your supervising
10 him at the training academy, any other connection
11 work wise beyond being in the same department or
12 division?

13 A. No.

14 Q. Okay. Socialize with him outside of
15 work?

16 A. No.

17 Q. And how about now Chief Quinlan, when
18 did you -- when did you first meet him? Have you
19 worked with him? Do you consider him a friend?
20 Those same questions.

21 A. I might have met him prior to, but I do
22 know that when I went to being the patrol
23 commander zone four, so this would have been '05,
24 I believe, but he was the third shift lieutenant

1 on zone four, and so I was his direct supervisor
2 at that time. And then subsequent to that, I've
3 pretty much known him ever since. And, yeah, I
4 would consider him to be a friend.

5 Q. You ever socialize outside of work?

6 A. We've attended social events at the
7 same time, same place, but I haven't like gone out
8 with just specifically him or his wife.

9 Q. Or your families, right?

10 A. Correct. Correct. Mostly those were
11 law enforcement --

12 Q. Related?

13 A. -- events.

14 Q. Yes, I understand.

15 A. Yes.

16 Q. And Lieutenant Echenrode?

17 A. I've never worked with him in the same
18 unit. I don't believe that I've ever directly
19 supervised him, but I've known him for a long
20 time.

21 Q. In the department context?

22 A. Correct. Correct.

23 Q. Not a personal friend?

24 A. No. Correct.

1 Q. And how about Jennifer Knight, same
2 questions?

3 A. Don't know when I first ran into her.
4 It's -- I don't know when. I haven't been her
5 supervisor --

6 Q. Oh, you haven't?

7 A. -- directly that I recall.

8 Q. Okay.

9 A. I've never worked with her in the same
10 unit. I'm trying to figure out when our paths
11 would have crossed for the first time. But she's
12 the sister-in-law of one of my deputy chiefs that
13 I've known for a long time.

14 Q. Which one is that?

15 A. Tim Becker.

16 Q. Have you ever disciplined Jennifer
17 Knight or been involved with discipline related to
18 her work in the internal affairs bureau?

19 A. Oh, I oversaw her, yeah. I was her
20 direct supervisor when she was in internal
21 affairs. I had -- I don't think that I've
22 officially disciplined her.

23 Q. Okay. And Ken Decker, what's your
24 knowledge about him, interactions --

1 A. Yeah.

2 Q. -- relationship?

3 A. All work related. I've never worked in
4 the same unit or supervised him directly, but I
5 have seen him on a number of incidents, because as
6 an investigator, when I have hearings, the
7 investigator comes into the hearings, so I've seen
8 him on any number of occasions. He's also part of
9 the pipes and drums band, so seen him that context
10 as well.

11 Q. Are you?

12 A. No.

13 Q. Okay. Is there -- I don't know what to
14 call it, but can you unofficially discipline
15 somebody, I guess, coach them or criticize them
16 say, don't do that again?

17 A. Can you?

18 Q. Yeah.

19 A. Absolutely.

20 Q. Did you ever do that with Jennifer
21 Knight?

22 A. Yes.

23 Q. Okay. And what was it about? If it
24 happened on more than one occasion, tell me that,

1 but --

2 A. One that I specifically remember was
3 that I believe that something that she directed
4 was a violation of the contract. And that was not
5 providing a record of an interview that the FOP
6 had asked for and she decided to not list it as an
7 interview. She said it was spontaneous, it wasn't
8 long, and it didn't amount to anything. So I --
9 she said, I don't call it a record. And I looked
10 into it more and I called it a record. And I
11 said, you should have provided that. And told her
12 that I thought that was a violation of the
13 contract.

14 Q. Wasn't she removed from internal
15 affairs?

16 A. She was reassigned.

17 Q. But wasn't it -- was it as a result of
18 some alleged misconduct?

19 A. Are you asking me why I reassigned her?

20 Q. Yes.

21 A. Because I'm the one that reassigns
22 people. That is not exactly the reasoning that I
23 would describe as to why. I want to have complete
24 trust in my internal affairs commander. And if

1 you are going to, in my opinion, violate the
2 contract and then basically argue that I was wrong
3 about that, then you don't have enough -- I don't
4 have enough trust in you to do that.

5 I have said for as many years as I
6 remember that I never knowingly violated the
7 contract. And because internal affairs deals with
8 contractual issues on a regular basis and the FOP,
9 I needed to know that my internal affairs
10 commander would follow the rules of the contract.
11 And she didn't see or agree with me on that
12 particular issue. And so that was the biggest
13 determining factor as to why she was reassigned.

14 Q. Isn't one of your priorities to -- I
15 mean, that you make clear to everybody who works
16 for you that you will not tolerate being
17 untruthful to you?

18 A. Absolutely.

19 Q. Okay. Wasn't she -- and if -- again,
20 I'm just asking for your best memory. Wasn't she
21 involved in a situation where she was overheard by
22 witnesses making dismissive comments about a
23 complaint from an employee, I don't believe it was
24 a uniformed employee, who was making a complaint

1 that IAB was supposed to look into and before it
2 was even looked into, she was making dismissive
3 comments about it? Does that ring a bell with
4 you?

5 MR. COGLIANESE: Objection. Go ahead.

6 A. You would have to be more specific for
7 me to be able to respond appropriately.

8 Q. Do you know an officer named Falacia
9 Dragin?

10 A. I do.

11 Q. Okay. Do you recall any kind of a
12 complaint or events involving Knight related to
13 her?

14 A. I know that Falacia filed a grievance,
15 I believe it was against a sergeant, I think
16 alleging discrimination. He had told her to do a
17 certain task. She refused to do it. I believe
18 she was disciplined, and then she filed a
19 grievance about the discipline. And there were --
20 there were complaints, I believe, that Commander
21 Knight had talked about that case as if it didn't
22 have merit or something like that. I asked some
23 questions about what was heard, seen, told, all of
24 that, and did not feel that there was enough

1 information to take formal disciplinary action on
2 that particular thing.

3 Q. Did you counsel her about what you
4 found out?

5 A. I told her how imperative it was that
6 the IA commander appears to be impartial to all
7 investigations, and that she shouldn't be talking
8 about any cases. The way that it was explained
9 was that it wasn't about, you know, what was
10 alleged. And I didn't have proof to sustain real
11 misconduct, but, yes, I counseled her about the
12 importance of the internal affairs commander
13 being -- you know, treating things confidentially,
14 not talking about cases and then appearing to be
15 impartial.

16 Q. What was the interview that Officer
17 Knight, I guess was she a lieutenant then?
18 Captain?

19 A. Commander.

20 Q. Commander. What was the interview that
21 Commander Knight claimed was not an interview?

22 A. That was out of an investigation of an
23 officer that -- let me make sure that I've got
24 this one right. An officer was accused of and he

1 was charged three different times, so this is why
2 I'm -- the first time he was accused of harassing
3 recruits when he was an instructor. The second
4 time I think that he was accused of not following
5 orders. And then the third time he was accused
6 of -- of harassing a fellow worker and saying
7 inappropriate things.

8 And so I think Commander Knight
9 decided, and I might have been involved in that
10 decision to do simultaneous interviews of the
11 officer and his girlfriend. In one of these
12 cases, I think the second or the third case, we
13 believe that he had made up a false call.

14 He had been ordered to not see this
15 particular girlfriend while he was on duty. And I
16 believe that he made up a false call or had his
17 girlfriend make up a false call so that they could
18 see each other while he was on duty. Because he
19 was married and he was seeing her while he was at
20 work rather than, you know, during his time off.

21 And so I believe the decision was that
22 they were going to do simultaneous interviews of
23 him and the girlfriend. And when they knocked on
24 the girlfriend's door, they talked to her briefly,

1 but she declined to come in for an interview, I
2 believe, and shut the door. But it was a long
3 enough discussion and they recorded it, that it
4 was a record in my opinion.

5 Q. Okay. Thank you.

6 Can you tell me -- first of all, when
7 did -- when did you first and how did you first
8 become aware of the overtime allegations -- you
9 know, faking overtime from Officer Sorrell
10 concerning Eric Moore?

11 A. Officer Sorrell made allegations, I
12 believe, to his chain of command that Sergeant
13 Moore had given him permission to take a city
14 phone or something along those lines, and Sorrell
15 admitted to his own behavior with regard to that.
16 He admitted to this behavior.

17 And so we started an investigation.
18 And at some point, I think Officer Sorrell then
19 added more allegations against Sergeant Moore.
20 And it just kept multiplying the number of
21 allegations that Officer Sorrell did.

22 And then as it was being investigated,
23 I think just more information came out. There
24 were a lot of interviews, obviously. And at some

1 point in time, they told me that there might have
2 been overtime abuse as well, but I don't believe
3 that that was part of the initial allegations, so
4 sometime after that first --

5 Q. So I will represent to you that in
6 August of '14, some overtime allegations were
7 brought up by Officer Sorrell based on documents
8 we've gotten from the city and the IAB file.

9 A. To the chain of command?

10 Q. Yeah.

11 A. Okay.

12 Q. Do you -- do you know or can you tell
13 me whether you were made aware of those in August
14 or September of 2014?

15 A. Probably.

16 Q. Probably?

17 A. Yes.

18 Q. Okay. Can you remember who it was who
19 told you about them?

20 A. I would assume it would have been
21 either the deputy chief over that subdivision
22 or --

23 Q. Was that Gray at the time, 2014, late
24 2014?

1 A. Maybe.

2 Q. Who else might it have been?

3 A. Well, I can't remember where they were
4 assigned at the time. If they were in SRB. So it
5 could have been, I think maybe Deputy Chief
6 Quinlan might have been over --

7 Q. Okay.

8 A. -- that subdivision --

9 Q. All right.

10 A. -- at the time. So I don't know if it
11 came from that subdivision or --

12 Q. Okay. Then do you -- at some point
13 later, do you remember being made aware of race --
14 a racist threat by Eric Moore?

15 MR. COGLIANESE: Objection.

16 Q. Allegations of a racist threat?

17 A. I remember being told that there was a
18 possibility of a racist -- or a threat against
19 another officer, yes.

20 Q. And how did you become aware of that?

21 A. I'm sure by some verbal means.

22 Q. Do you remember who?

23 A. No.

24 Q. Okay. Do you remember getting a letter

1 from Sergeant Williams about it?

2 A. I don't know that I received a letter
3 directly from Sergeant Williams about it.

4 Q. Can we look at Exhibit 5?

5 - - - - -

6 Thereupon, Plaintiff's Exhibit 5 is marked
7 for purposes of identification.

8 - - - - -

9 Q. For the record, Chief, you've been
10 handed what's been marked for identification as
11 Plaintiff's Exhibit 5. Would you take a moment
12 and look at that document and tell me if you
13 recognize it?

14 A. What was the question?

15 Q. Do you recognize that document?

16 A. I believe I've seen it before, yes.

17 Q. Okay. Now, prior -- based on the
18 content of the letter, does this bring to mind to
19 you that you had already heard from some other
20 source about the overtime issue regarding Moore?

21 A. Yeah, I would say that's a good
22 possibility.

23 Q. Okay. Did you -- what is -- where was
24 the AV tech unit?

1 A. It was more than anything else located
2 in the SRB bureau, fairly unofficial, but had been
3 fairly longstanding. They were the ones that
4 helped out with surveillance equipment.

5 Q. Okay. And at this point in time, if
6 you -- best you can remember, was Quinlan the
7 deputy chief for SRB?

8 A. I believe so.

9 Q. Okay. And at this point in time, was
10 Eric Moore, had he already left SRB and gone to
11 narcotics?

12 A. That's a good possibility. I don't
13 know.

14 Q. Okay.

15 A. And I'm not even sure about Quinlan
16 being the deputy chief. I can't remember when he
17 got promoted --

18 Q. Okay.

19 A. -- to deputy chief, so...

20 Q. What was your reaction when you saw
21 this letter from Sergeant Williams?

22 A. That it needed to be investigated.

23 Q. Okay. Did you -- from the statement
24 attributed to Moore, did you think it was a -- did

1 it sound like a joke?

2 A. I wouldn't interpret it that way.

3 Q. And would it be acceptable under the
4 policies of the department to reference -- use
5 references like niggers and monkey?

6 A. No.

7 Q. What steps did you take after you got
8 that letter, if any?

9 A. I just know that it needed to be
10 investigated by internal affairs and making sure
11 that this was included in the file.

12 Q. I mean, did you -- did you communicate
13 with internal affairs? Did you communicate with
14 Quinlan or whoever it was the deputy chief?
15 Exactly what do you do when you get a letter like
16 this?

17 A. Send it to internal affairs.

18 Q. Okay. And at the time, who would have
19 been in charge of internal affairs in early
20 September 2014?

21 A. I don't know.

22 Q. Okay. But whoever that person was,
23 that's what you would have done with this letter?

24 A. Correct.

1 Q. All right.

2 A. I -- I don't know if I had possession
3 of it or if it was on a routing sheet. My
4 secretary logged all of my correspondence in and
5 out, but oftentimes deputy chiefs would bring a
6 letter in, show it to me, I would give them some
7 kind of verbal direction --

8 Q. Okay.

9 A. -- and they would then forward it on
10 out.

11 Q. But at the time, is it reasonable to
12 believe that you knew there was already an IAB
13 investigation concerning Moore's -- the
14 allegations about Moore's false reporting work,
15 not showing up for work, overtime, that kind of
16 stuff?

17 A. I believe it's reasonable to believe
18 that, yes, there was already an investigation
19 underway. I don't know all of the allegations
20 that were currently under investigation at that
21 time. But as I said before, I remember that what
22 Officer Sorrell first told us wasn't everything
23 that we later found out were, you know, potential
24 allegations.

1 Q. Okay. Do you recall that within, oh,
2 about -- I'm sorry.

3 You -- were you involved in relieving
4 Officer Sorrell of his duties in early
5 September 2014?

6 A. By "involved," what do you mean?

7 Q. Did you authorize it?

8 A. I don't recall specifically. If I was
9 asked if I approved, I probably would have said
10 yes.

11 Q. Okay. Do you sometimes initiate
12 officers being relieved of duty?

13 A. I have.

14 Q. Okay. And what determines whether you
15 do it or not?

16 A. Depends on what knowledge I have of the
17 circumstances. If it occurred in my presence or
18 something else, then -- or if it was brought
19 directly to me, then I could order it. But the
20 chains of command also have the authority to
21 relieve somebody of duty without my approval. And
22 I just don't recall if this was one that I was
23 consulted on prior to the actual relief of duty.
24 I might very well have. I do recall that when he

1 came forward, he was making allegations of things
2 that had happened months and years prior to.

3 Q. Okay. And how was that pertinent?

4 A. There's a statute of limitations on
5 some things, and, you know, we decide whether or
6 not we're going to investigate based on timeliness
7 for some allegations. There's a directive that
8 actually addresses, you know, that if you're going
9 to make an internal allegation, that it should be
10 done within a more prompt period of time.

11 Q. Is there a time limit for a threat like
12 as reported here to take action on?

13 A. It's not specific to threats. It's --

14 Q. Well, discrimination claim like --

15 A. Well, discrimination has its own EEO
16 laws, but the directive, I believe, is more
17 general just saying that internal investigations
18 should be made -- or allegations should be made
19 within a certain period of time. I don't recall
20 what it is. And that there will be a decision
21 made on whether or not it's going to be
22 investigated. You know, if somebody said, three
23 years ago I didn't wear a hat, we wouldn't
24 investigate that.

1 Q. Sure. Did you consider ordering
2 Sergeant Moore relieved of duty when you learned
3 about this accusation?

4 A. I don't recall a specific conversation
5 about it, but --

6 Q. Well, just on your own did you think
7 about it when you got the letter?

8 A. Not that I recall a specific -- I
9 don't -- I don't even know what the state of that
10 was at that point in time.

11 - - - - -

12 Thereupon, Plaintiff's Exhibit 6 is marked
13 for purposes of identification.

14 - - - - -

15 Q. Okay. For the record, Chief, you've
16 been handed what's been marked as Plaintiff's
17 Exhibit 6. And my first question is: Can you --
18 do you recognize that document?

19 A. There's no indication that it came to
20 me directly. It was very potentially part of the
21 investigation of Eric Moore and/or of Wes Sorrell,
22 but I don't --

23 Q. On the second page of the document,
24 there appears to be something sent to you?

1 A. All correspondence within the division
2 of police is addressed to the chief of police.

3 Q. Okay.

4 A. That never means that it was received
5 by me. My correspondence log kept by my secretary
6 would be the best indicator whether or not it was
7 sent to my office directly.

8 Q. Okay. So in order to know whether this
9 document that's from Echenrode to you on
10 September 10th actually got to you, we would need
11 to look at your log?

12 A. Correct.

13 Q. Okay. It's just called the log?

14 A. Correspondence log or mail log.

15 Q. Okay.

16 A. Yes.

17 Q. Is it maintained or is it destroyed?

18 A. It's maintained in accordance with
19 public record law.

20 Q. Do you know what the requirement is for
21 your logs?

22 A. I would say it's probably at least
23 three years.

24 Q. Okay. All right. Thank you.

1 A. Sure.

2 Q. I mean, if you didn't see it, that's
3 all I need to know.

4 A. I don't know if I --

5 Q. You just don't remember?

6 A. Correct.

7 Q. Okay. I will represent to you that
8 Sergeant Williams was later interviewed in October
9 of 2014 as part of an internal affairs
10 investigation of Eric Moore. Did you ever read
11 that interview or the interview summary as best
12 you recall?

13 A. I don't want to make an assumption. I
14 would -- I would assume that I did, but I --
15 that's an assumption.

16 Q. Okay.

17 A. I can't say with certainty whether I
18 did or not.

19 Q. Well, maybe this will help. Do you
20 recall during the interview, Sergeant Williams
21 talking about over his career, he's experienced,
22 you know, racial slurs and racist comments being
23 made at the division, and that he wouldn't always
24 report them, you know, you just kind of get used

1 to it?

2 A. I do remember that.

3 Q. Okay. What was your reaction when you
4 read that he said that?

5 A. I was disappointed that he had
6 experienced some of the same things, differently,
7 that I had, you know, that -- that feeling of
8 being excluded, the feeling of being treated
9 differently based on his race, rather than my
10 gender. I don't -- I don't think a lot of people
11 understand what that feels like. And so when I
12 hear that other people have experienced it, it
13 makes me disappointed and sad that they've had
14 that occur to them.

15 I know that -- I believe that things
16 have gotten better with regard to at least
17 explicit messages like that. I know it did for
18 me. I just don't know if it was because I got
19 promoted and people wouldn't say those kinds of
20 things around me. But it's just discouraging to
21 know that other people have been the subject of
22 derogatory comments based on, as you said before,
23 their difference, you know, whether it's race,
24 gender, sexual orientation, religion, anything.

1 It just has no place in the workplace in my
2 opinion.

3 Q. I noticed you said you think it's
4 getting better. I mean, have you got -- have you
5 done any study yourself or had somebody do it to
6 see whether it's really better, and how would you
7 do -- how would you determine that?

8 A. I listen to people. I have meetings
9 with a lot of people, and I had a lot of meetings
10 with a lot of employees. And I specifically had a
11 meeting with a significant sized group of
12 African-Americans, probably in 2015, and asked
13 what their experience was. James Fuqua was
14 somebody that helped organize the meeting for me.
15 It was after I prepared a training program that I
16 thought was relevant to what was going on with
17 police-involved shootings at the time. And I
18 wanted to hear what that focus group thought of
19 the training, whether it was far enough.

20 I also sought feedback after we did
21 implicit bias training from African-Americans and
22 said, you know, did we -- how did we do? Because
23 we did the implicit bias training. I thought it
24 was decent training, but I didn't know if it had

1 actually, you know, accomplished everything that I
2 wanted it to. So any number of times I sought
3 feedback from employees within the division of
4 police on how their experience was and how they
5 felt they were being treated. And so based on the
6 feedback that I got, based on, you know, the types
7 of complaints that we have received, I believe
8 that explicit signs of racism or discrimination
9 had at least dropped during my career as compared
10 to where it was when I began.

11 Q. Did you go talk to Sergeant Williams
12 after you got that letter?

13 A. I don't believe that I did, no.

14 Q. How about after you read his interview
15 where he was talking about how he stopped
16 complaining about it or didn't report it?

17 A. I don't believe that I had a
18 conversation with him about it, no.

19 Q. Okay. Did you -- and I -- I think you
20 sort of said this, but I want to focus on it. You
21 don't -- you don't honestly expect that line
22 officers are going to feel totally open to talk to
23 the chief of police about every aspect of their
24 work, would you?

1 A. I believe that some will tell me what
2 they're thinking and some won't.

3 Q. Okay. And some people don't want to
4 bring up discrimination and some are willing to,
5 right?

6 MR. COGLIANESE: Objection.

7 A. Their perception of allegation -- of
8 discrimination, some will and some won't probably,
9 yes.

10 Q. When -- did you -- were you concerned
11 at all -- well, I guess I don't -- did you learn
12 at some point that Sorrell had been relieved of
13 duty?

14 A. Oh, I -- yeah, I was aware of that.

15 Q. Okay. And you approved it?

16 A. Like I said, I don't know if I, you
17 know, weighed in on approving it or not, but I was
18 not opposed to it at all, that's for sure. I
19 don't know if I said you have my approval or I
20 agree or what, but it was -- based on what he had
21 admitted to, I believe it was the appropriate
22 thing, because we, at that point in time, thought
23 it was criminal behavior.

24 Q. Okay. I just was going to ask you was

1 it based on him admitting --

2 A. Yes.

3 Q. -- that he kept the phone --

4 A. Correct.

5 Q. -- or whatever it was he did?

6 A. And --

7 Q. Okay. All right. Now, did you -- you
8 were being informed, were you not, about the
9 progress of the Moore investigation from time to
10 time after October, you know, into November, et
11 cetera, because it went on for a long time, right?

12 A. Yes. I was being informed and I was
13 also asking about, you know, the investigation.

14 Q. So would it be -- wasn't it the case
15 that by December of 2014, this is, you know, going
16 on three months after the initial reports, you had
17 been informed that Sergeant Moore's racist
18 comments and the racist threat had been confirmed
19 during interviews by Sergeant Decker?

20 A. What's the question?

21 MR. COGLIANESE: Objection.

22 MR. GITTES: Want to read that back,
23 please?

24 (The record is read as requested.)

1 A. I would have to answer no to that,
2 because, to my knowledge, the threats have never
3 been confirmed. And the other part of that is is
4 I don't know the timing of which I found out that
5 there was a likelihood that the derogatory comment
6 was going to be sustained.

7 Q. Well, don't you know as you sit here
8 today that besides Officer Sorrell, another
9 officer confirmed that Moore made a threat of
10 violence against Eric Moore and Sergeant Williams?

11 MR. COGLIANESE: Objection.

12 Q. I'm sorry, Eric Cornett, yeah, sorry.

13 MR. COGLIANESE: Objection. Fred, why
14 don't you repeat the question --

15 MR. GITTES: I'll repeat the question.

16 MR. COGLIANESE: -- because we've got a
17 bunch of names.

18 Q. Sitting here today, don't you know that
19 Sergeant Decker interviewed Sergeant Watkins that
20 confirmed that Sergeant Moore had made a threat of
21 violence toward Sergeant Williams and Eric
22 Cornett?

23 MR. COGLIANESE: Objection.

24 A. I don't recall the names of people or

1 what you say is confirmed, but I believe that that
2 allegation was not sustained.

3 Q. I understand it wasn't sustained,
4 that's why we're talking to you about it.

5 A. Okay.

6 Q. Did you look at the evidence when you
7 accepted a report that said it wasn't sustained?

8 MR. COGLIANESE: Objection.

9 A. You mean this particular one?

10 Q. This particular one.

11 A. I would say that I probably did.

12 Q. Okay. So then my question to you is:
13 On what basis would you not sustain that Sergeant
14 Moore didn't make or there was a lack of evidence
15 that Moore made the threat to take the two
16 monkeys -- basically a threat against two black
17 officers and do some violence to them out back?

18 MR. COGLIANESE: Objection.

19 Q. When you had -- you had an Officer
20 Sorrell confirm such a statement and then you had
21 a second officer, Watkins, who confirmed a -- not
22 exactly the identical words, but confirmed the
23 threat to do violence to Cornett. Why is that not
24 enough evidence to sustain it?

1 MR. COGLIANESE: Objection.

2 A. Without being able to point to the
3 actual testimony and review that, I can't respond
4 to that. As you pointed out, it wasn't the same
5 exact confirmation that Officer Watkins provided.
6 And I don't recall what all of the other reviewers
7 had to say about their reasoning for not
8 sustaining that particular allegation. Very
9 rarely is it left to me to decide whether or not
10 something is sustained or not. Most of the time,
11 it is for me to decide whether or not something
12 that is sustained is going to result in a written
13 reprimand or a departmental charges. So that's
14 the focus of my review most of the time.

15 Certainly in this one, you know,
16 threats against officers are, in my opinion, very
17 serious, and we have to, you know, decide whether
18 or not we think that they are something that is
19 criminal, administrative, whether it requires
20 protection or whether it's not sustained. And so
21 without the evidence before me, I can't explain to
22 you what my reasoning is, because I don't recall
23 all the specific interviews and justifications.

24 Q. If Officer Watkins confirmed that

1 Sergeant Moore had made violent -- a violent
2 threat towards Eric Cornett using racist language,
3 along with Sorrell's report, which you do remember
4 that, don't you? It's reflected in the letter you
5 just read.

6 MR. COGLIANESE: Objection.

7 A. I remember reading about it, hearing
8 about it.

9 Q. Okay.

10 A. Yes.

11 Q. Do you remember also that there was
12 confirmation from several other officers that
13 Moore routinely made racial slurs, used the N word
14 and talked about taking people out back and
15 fighting with them?

16 MR. COGLIANESE: Objection.

17 Q. Do you remember that?

18 A. I believe that there were other
19 interviews that alluded to behavior of Sergeant
20 Moore's that was derogatory. And then there were
21 others that said they never heard such a thing,
22 so -- and that included some African-Americans
23 that testified that he had always treated them
24 well or, you know, that they hadn't heard such

1 things.

2 So, yes, I remember that there were
3 other statements that didn't necessarily
4 corroborate this particular threat, but other --
5 other people that said that Sergeant Moore had
6 some things, but I don't believe that they were
7 specific enough, dates, times, places for us to be
8 able to pin him down.

9 Q. So let me make sure I understand.
10 You -- you did have the authority to issue more
11 severe punishment, right?

12 A. Than what?

13 Q. Than -- well, first of all, you could
14 reverse the not sustained and sustained it?

15 A. I could have.

16 Q. Okay. And you knew there were both
17 white and black officers who told Decker that they
18 had heard him use racist terms, told Decker that
19 he -- they believed he had racist attitudes based
20 on his comments. One of them said with respect to
21 the threat, he didn't deny it when he asked Moore
22 about it. You also had several officers, again,
23 black and white, who confirmed specific examples
24 of him threatening to take people out and fight

1 them or beat them up?

2 MR. COGLIANESE: Objection.

3 Q. And you're telling -- and I want to
4 make sure I understand. You did not feel that was
5 enough evidence to corroborate either that Moore
6 made either version of the direct threat to
7 Cornett or Williams together -- despite Sorrell
8 and Watkins both supporting that as well?

9 MR. COGLIANESE: Objection.

10 A. The decision of that particular
11 allegation was not sustained, and so I have to say
12 that, yes, I wasn't convinced by the evidence,
13 whatever that is, and you're giving testimony as
14 to what some of that evidence was that I may or
15 may not recall parts of all or not. But it was --
16 it was not my decision to override the
17 recommendation of not sustained, correct.

18 Q. And if I understood your answer was
19 that you -- part of the reason you didn't take --
20 or you accepted the not sustained charge is that
21 some other officers, white and black, according to
22 your recollection, said they hadn't personally
23 heard Moore make such racist statements or
24 threats; is that right?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. I don't believe that I testified that
3 that was relevant to the decision to over -- to
4 not override the not sustained. Sounds like a
5 double negative. The allegation of making a
6 derogatory comment was sustained. The allegation
7 of making that particular threat was not
8 sustained. And it was a particular threat of a
9 particular nature at a particular time.

10 So the fact that other people might
11 have heard derogatory comments is significant, but
12 it's not necessarily overriding whether or not
13 this particular comment was made as described in
14 the allegation. And that's the -- that's the
15 situation that we're in where we have a specific
16 allegation about a specific comment at a specific
17 time. And you might believe that, you know,
18 there's circumstantial evidence, but you might not
19 be able to prove that there was enough evidence to
20 sustain an allegation.

21 Q. So just to make sure I understand.
22 Because two witnesses reported about the same
23 threat occurring at the same time, had slightly
24 different versions of the wording, and Sergeant

1 Moore denied making that threat, you felt
2 obligated to accept the denial?

3 MR. COGLIANESE: Objection. Go ahead.

4 A. I didn't say it that way. I said that
5 based on all of --

6 Q. I'm saying it that way. Isn't that
7 true?

8 MR. COGLIANESE: Fred, let her finish.

9 MR. GITTES: I want to make sure she
10 understands my question.

11 THE WITNESS: I said --

12 MR. GITTES: Want to read it back to
13 her?

14 MR. COGLIANESE: Chief, finish your
15 answer.

16 MR. GITTES: She can finish it when she
17 hears the question again.

18 MR. COGLIANESE: It depends on which
19 question you're asking her, because you cut her
20 off twice on questions here.

21 MR. GITTES: I hadn't finished my
22 question. She can't answer a question until it's
23 finished. So I'm giving her a chance to hear the
24 question I asked.

1 MR. COGLIANESE: And, Chief, by all
2 means, give a full answer.

3 (The record is read as requested.)

4 MR. COGLIANESE: Feel free to respond.

5 Q. Do you not understand the question?

6 MR. COGLIANESE: Feel free to respond.

7 Q. Do you understand what I'm asking you?

8 A. You -- you suggested that I did not
9 feel obligated. That is not the terms that I
10 would use. I said, based on the information that
11 I reviewed at that time, the evidence that had
12 been submitted, that I did not override the
13 decision.

14 Q. Okay.

15 A. And part of that is that the two
16 officers that said something happened and part of
17 it is all of the other information. So it's based
18 on all of the evidence, not just a particular
19 subset.

20 Q. Okay. What other information did you
21 have regarding that specific threat, other than
22 the two officers and Sergeant Moore's statements
23 about it?

24 A. Without re-reading the entire

1 investigation and trying to remember what I was
2 making a decision on four or five years ago, I
3 can't tell you.

4 Q. Well, I'll represent to you that no
5 other witness claimed to have heard the threat.
6 That the only people who specifically represented
7 they had heard it were Sorrell and Watkins,
8 although their wording was slightly different, and
9 Sergeant Moore denied it. I'm unaware, I will
10 represent to you, and we have extensively reviewed
11 the IA packet, there's no documentation of a
12 threat, unlike other things that occurred later
13 that we're going to talk about. It's just those
14 three who claimed one way or another to have
15 knowledge about whether it was or wasn't said.

16 So if you have some thought of any kind
17 of other evidence that maybe we're not aware of, I
18 would sure like to hear it.

19 MR. COGLIANESE: Objection.

20 A. I've testified that it's based on the
21 information that I had before me and --

22 Q. Okay.

23 A. So --

24 Q. I'm representing to you had that before

1 you.

2 A. I already told you that I also had
3 people within the chain of command that had
4 weighed in on that particular allegation as well.

5 Q. Did someone in the chain of command
6 claim to be there when the statement was allegedly
7 made?

8 MR. COGLIANESE: Objection.

9 A. Not to my knowledge.

10 Q. They would have been relying on the
11 same IAB investigation you were, wouldn't they?

12 A. Yes.

13 Q. You also knew, independent of that
14 specific threat, that there was a sustainable
15 conclusion that Sergeant Moore made racist
16 comments on multiple occasions, not just that
17 single occasion, right?

18 A. Not sustainable, no.

19 Q. No. They found it was sustainable?

20 A. There was one allegation of a racist
21 comment, a derogatory comment. There were other
22 people that had been interviewed that alleged
23 that, but they didn't allege it with dates, times,
24 places, you know, participants, all of those

1 things. So I wouldn't describe those as
2 sustainable. The one sustainable allegation we
3 had was in that investigation.

4 Q. So, in other words, you disregarded the
5 interviews by Sergeant Decker where a number of
6 other officers, black and white, confirmed that
7 they had heard Sergeant Moore saying things --
8 using the N word, talking about blacks being --
9 referring to them as monkeys, referring to blacks
10 as being lazy and also talking about taking
11 officers out and fighting them. You just
12 disregarded that, because those people hadn't made
13 a specific complaint to the chain of command or to
14 IAB; is that right?

15 MR. COGLIANESE: Objection.

16 A. You're characterizing it as me
17 disregarding that information, and I would not.

18 Q. That's right, I am.

19 A. I would not.

20 MR. COGLIANESE: Let her finish.

21 Q. Well, how did you weigh that evidence?

22 MR. COGLIANESE: Fred, please let her
23 finish.

24 MR. GITTES: She was finished.

1 MR. COGLIANESE: No, you cut her off
2 and she was finishing.

3 Q. Chief, let me make it clear so I don't
4 have to have continued interruptions by counsel
5 trying to direct your testimony. If you feel I'm
6 cutting you off, just say it, okay? He doesn't
7 have to say it. You're answering the question.
8 Please tell me if you -- if you remember something
9 that you don't, interrupt me. If you feel I'm
10 interrupting you, please tell me. I don't mean to
11 interrupt you. I really don't. I really want to
12 hear what you have to say.

13 MR. COGLIANESE: And, Mr. Gittes, when
14 you talk over her, I'm going to tell you you're
15 interrupting her, and I'm going to tell her to
16 finish, which is what you keep doing. So, Chief,
17 please finish.

18 Q. Are we clear that you can tell me if
19 you feel I'm interrupting you?

20 A. Sure.

21 Q. And will you do that?

22 A. I will.

23 Q. Okay. Now, you --

24 MR. COGLIANESE: And, Chief, if you

1 haven't finished your previous answer, please
2 finish it.

3 Q. Were you finished?

4 A. No.

5 Q. Okay. What else did you want to say?

6 A. You -- you characterized my review as
7 disregarding information, and I regarded all of
8 the information.

9 Q. Okay. How did you weigh with respect
10 to the accusation about the violent threat
11 confirmed by Watkins and Sorrell, how did you
12 weigh the other testimony about racist comments,
13 comments about fighting, stupidity of black
14 officers, use of the N word, et cetera, how did
15 you weigh that with respect to whether or not the
16 charge about the specific threat to Cornett and
17 Williams should be sustained? Explain your
18 thinking.

19 MR. COGLIANESE: Objection. Go ahead.

20 A. Well, first of all, that was years ago,
21 and I can't recall specific balancing of
22 percentages or anything, you're talking about
23 weighing and all that. I can't remember what I
24 did years ago in that regard. It boils down to I

1 wasn't convinced that I could prove that charge.

2 Q. Okay. Now, you also said that with
3 respect to the other charge about using the
4 inappropriate racist language, you only had one
5 incident, is that what I understood you to say a
6 little bit ago?

7 MR. COGLIANESE: Objection. Go ahead.

8 A. There was an allegation made in this
9 particular investigation that was investigated and
10 prepared about this remark being made. That was
11 sustained. Other people's testimony in their
12 interviews were not written up as other
13 allegations.

14 Q. And is it -- was it your policy while
15 you're the chief that when new incidents of
16 misconduct, including racist misconduct, racist
17 language that clearly violates the department's
18 policies and the law come up, that you are not
19 allowed to consider them and IAB is not allowed to
20 follow up on them?

21 MR. COGLIANESE: Objection.

22 Q. Is that your testimony?

23 A. That is not my policy.

24 Q. Okay. Well, then explain to me why the

1 other officers who were reporting experiences with
2 Moore, both to them directly, but also him
3 discussing this kind of stuff with them regarding
4 black officers wasn't part of the charge that was
5 made?

6 A. That wasn't my decision. That was the
7 decision made by the IAB investigator and that
8 chain of command to decide what the allegations
9 are.

10 Q. Okay.

11 A. And if they felt that it was an
12 allegation that needed to be further investigated,
13 they should have.

14 Q. You had the -- you're the chief at the
15 time, right?

16 A. Yes.

17 Q. Have you ever opened -- ordered them to
18 reopen or expand an investigation?

19 A. I don't know about reopening an
20 investigation, but I've certainly given them some
21 direction on what I thought were appropriate
22 allegations.

23 Q. Well, in cases where they were added to
24 the investigation?

1 A. Yeah.

2 Q. Okay. You didn't do that in this case?

3 A. No. I -- I think that I did with
4 regard to some of the comments that were brought
5 up. I believe that I talked to them about, you
6 know, Sorrell. And to my recollection, he made
7 this allegation about the phone, and then he
8 didn't feel like he was getting enough attention
9 and so he made more allegations and he made more
10 allegations. And the allegations kept coming in.
11 And so I believe that I did at least approve, if
12 not direct, adding other allegations.

13 Q. So, Chief, just to save time for the
14 rest of the afternoon, I'm only interested in the
15 discrimination allegations. I have no -- I may
16 touch on them, but the focus of this case, you
17 know, is about your handling and the department's
18 handling of the discrimination issues related to
19 Sergeant Shaw, okay?

20 A. Okay.

21 Q. You did not order any expansion of the
22 investigation or follow up regarding these other
23 officers who reported other racist comments by
24 Sergeant Moore, did you?

1 A. Not to my recollection, no.

2 Q. But you did order further follow up on
3 things about whether cell phones were taken and
4 whether overtime was done, but not on the racist
5 comments, right?

6 A. I don't recall the exact, you know,
7 process and chronology, but I might very well have
8 made sure that that allegation was investigated.

9 Q. I'm not -- okay. I'm sorry, let's -- I
10 don't want to have a terminology problem here.
11 I'm not talking about that allegation. I'm
12 talking about follow-up allegations, additional
13 specific allegations about these other comments,
14 racist comments that other officers were reporting
15 about Moore during Decker's investigation of the
16 particular racist comment that started this. You
17 did not instruct IAB to follow up on them and
18 prepare new specifications or charges, did you?

19 MR. COGLIANESE: Objection.

20 A. The lack -- the lack thereof certainly
21 indicates that I did not give such an order.

22 Q. In contrast with -- regarding the money
23 issues, what I call the money issues, theft of
24 time, theft of property and so forth, you did make

1 instructions to expand certain things, correct?

2 A. I don't know what my role was in
3 initiating the allegations. I just know that
4 Moore came in and we decided that there was going
5 to be more to investigate.

6 Q. Okay. "We" includes you? When you use
7 the word "we"?

8 A. I don't investigate things, I order
9 people to do it or --

10 Q. So "we" --

11 A. -- approve of that.

12 Q. -- including you approving of it?

13 MR. COGLIANESE: Okay. You cut her off
14 again. Please finish your answer, Chief.

15 Q. Did you get her answer? Okay. Thanks.
16 Do you want to add anything else?

17 A. No.

18 Q. Now, at some point during the
19 investigation, do you recall becoming aware of
20 information about Sergeant Moore ordering a
21 lightning link?

22 A. I -- I don't recall that until actually
23 the OCRC thing when -- and Pam Gordon started
24 talking about it. It might have been something

1 that I reviewed when I reviewed the investigation
2 or the summary. But it did not -- it did not -- I
3 don't recall any such attention that I had prior
4 to it becoming an issue in the OCRC thing. And
5 that was well after the investigation was closed.

6 Q. Well, let me see if I can -- let me
7 just ask you questions about it. Do you recall
8 becoming aware during the course of this
9 investigation that -- that Officer Shaw had a
10 second interview with Decker? He was interviewed
11 twice. Do you remember that?

12 A. Not specifically.

13 Q. Okay. Do you remember learning during
14 the investigation that from the -- from Sergeant
15 Decker or from reading the material, that someone
16 had made Karl Shaw aware of the fact that the --
17 what is it? What's the agency? Yeah, ATF had
18 been investigating or checking Sergeant Moore
19 because it was discovered he'd ordered a lightning
20 link. Does that ring a bell with you?

21 A. Well, I'm aware of that now.

22 Q. No, I'm trying to put --

23 A. I don't know when I first became aware
24 of it.

1 Q. Okay. Do you recall that Sergeant
2 Decker, in the report, didn't -- determined, I
3 believe with the advice of Jennifer Knight, that
4 there would be no further inquiries about the
5 lightning link because ATF had not filed charges?

6 MR. COGLIANESE: And I'm just going to
7 object because you said didn't determine, and I
8 just wanted to make sure that you both are
9 answering the question that he asked.

10 MR. GITTES: Okay. Thank you.

11 MR. COGLIANESE: So...

12 MR. GITTES: Let me -- let me make sure
13 I ask the question correctly.

14 Q. Do you recall becoming aware that
15 Jennifer Knight, in consultation with Sergeant
16 Decker, decided not to look into the lightning
17 link matter further, because ATF had not filed
18 criminal charges?

19 A. I am aware of that. I don't know when
20 I became aware of that.

21 Q. Okay.

22 A. It might very well have been at the
23 conclusion of the investigation and when it was
24 sent to me for review, or it could have been even

1 later when it was brought up at OCRC.

2 Q. Is it -- was it your policy, I should
3 ask, while you were the chief that if another law
4 enforcement agency did not prosecute a potentially
5 criminal matter regarding one of your officers,
6 that IAB could not look into it further?

7 A. Could you state the question again?

8 Q. Sure. Was it a policy while you were
9 the chief that if another law enforcement agency,
10 federal or state, decided not to prosecute one of
11 your officers about a potential criminal issue,
12 that meant IAB should not look into it further?

13 A. I had no such policy.

14 Q. Okay. And I believe there have been
15 occasions during your tenure as chief when some
16 other law enforcement agency, for whatever reason,
17 decided not to do a prosecution, but the CPD and
18 the county prosecutors ended up doing one. Hasn't
19 that happened?

20 A. The second part of that question, I'm
21 not sure I'm going to be able to answer.

22 There are cases in both regards where
23 other agencies have criminally investigated our
24 personnel where internal affairs has been ordered

1 or does follow up with an administrative
2 investigation. And there have been cases where a
3 criminal investigation has ensued from another
4 agency and we don't investigate. There have been
5 both --

6 Q. Directions?

7 A. -- scenarios.

8 Q. But there's no automatic rule that you
9 don't touch something --

10 A. Correct.

11 Q. -- if another --

12 A. Correct.

13 Q. -- law enforcement agency doesn't
14 pursue it?

15 A. Correct.

16 MR. GITTES: Can we -- doesn't have to
17 be long, but I need to eat lunch.

18 THE WITNESS: Okay.

19 MR. COGLIANESE: That's fine.

20 MR. GITTES: Unless we can -- I can't
21 remember, is there food real close?

22 MR. COGLIANESE: Why don't we go off
23 the record.

24 MR. GITTES: Yeah. Yeah. Sure. Sure.

1 THE VIDEOGRAPHER: We're off the
2 record. The time is 12:47.

3 - - - - -

4 Thereupon, a luncheon recess is taken
5 at 12:47 p.m.

6 - - - - -

Monday Afternoon Session

May 20, 2019, 1:27 p.m.

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THE VIDEOGRAPHER: This marks the beginning of media number three. We're back on the record. The time is 1:27.

Q. Chief, let's start where I think I left off sort of. I was asking about a lightning link and, you know, other law informant agencies. But I forgot to ask you: Can you tell us for the record what a lightning link is?

A. I don't know for sure. I've been told that it has something to do with like a bump stock, I believe, making a weapon fire faster.

Q. Okay. And are you aware or have you been aware that it's illegal?

A. Through this investigation. That's the only place I've ever heard of it.

Q. Okay. Switching totally now.

A. Okay.

Q. I want to talk to you about SRB. And I just -- just -- I want to make it clear to you, we're going to be going back and forth. I'm going to come back to some things we've touched on, but

1 in light of subsequent things I'm going to ask you
2 about to see how that might affect or change what
3 you remember, okay?

4 A. Sure.

5 Q. Because I realize I said in the
6 beginning, and I guess I didn't make this clear, I
7 know no one's memory's perfect, so you understand
8 you can interrupt me at any time, I don't remember
9 if I said this or not in the beginning. If you
10 remember something you forgot, interrupt me and
11 say, oh, by the way.

12 A. I do.

13 Q. Okay. At some point, I believe it was
14 in the fall of 2014, but I -- it's not clear to us
15 exactly when, there started to be some discussion
16 about either reorganizing or disbanding portions
17 of SRB. Do you recall at some point making a
18 decision about modifying or reorganizing SRB?

19 A. I do.

20 Q. Can you tell me about when that started
21 being discussed?

22 A. I think it's always been on the
23 discussion table. SRB was created in 1999 as its
24 own basically community policing bureau. And

1 there have been a lot of people that have
2 discussed over the years whether it needed to be
3 its own entity or not. And so previous chiefs and
4 a lot of other command staff personnel have talked
5 about the necessity of having that bureau. And if
6 there is going to be such a bureau, what should be
7 in it.

8 I made adjustments to the entire
9 organizational chart after I became chief and
10 created some bureaus and moved entities within
11 bureaus around. And that occurred for my whole
12 seven years as chief, making changes to the
13 organizational chart.

14 And then in addition to that, I had set
15 up a procedure for us to -- for me to make
16 decisions three times a year on staffing requests.
17 I told everybody if they wanted to have new
18 assignments created, that they should send in
19 requests only three times a year. Previous chiefs
20 had allowed people to walk into the office and
21 say, hey, I need a couple more officers here, and
22 the chief would consider it then. But in my
23 opinion, I needed to have the big picture, look at
24 it on a more infrequent basis and then look at the

1 whole and decide.

2 So I would get requests to create
3 positions or expand units throughout my tenure as
4 chief. And I had to make decisions about whether
5 or not to approve such requests. Typically I had
6 told them I would make them in February, June and
7 October. And so I would like collect these
8 requests and then I would review them and we would
9 discuss them at executive staff, if not command
10 staff, and decide what to do about those.

11 I believe it was during 2014 that I had
12 gotten a lot of requests to create a number of
13 assignments and positions that either didn't exist
14 or to expand them, and the number was quite high.
15 And I wanted to do a lot of those, but the
16 division was not hiring to add at that point in
17 time, we were just maintaining, if not sinking
18 lower in our total sworn ranks. And so there
19 weren't any new people, you know, or new numbers
20 of people, it was just moving some here to fill
21 this hole over here, but you're basically just
22 taking -- you know, robbing Peter to pay Paul
23 basically.

24 And so I wanted to create some of those

1 new requests or approve those, and I knew that I
2 had to find someplace else that I could take away
3 from. So that was part of my consideration with
4 regard to looking at the organization and
5 determining where I could fill some holes and do
6 without.

7 Because there had been advocates to
8 disband either all of SRB or parts of SRB, I
9 started looking at whether or not those were still
10 vital. SRB enforcement section was one of those
11 areas that the original idea was to supplement the
12 community policing idea of some uniformed
13 officers, community liaison officers, and do some
14 of the detective work, if you will, that needed to
15 be done and street level work that needed to be
16 done, but it had morphed even prior to me becoming
17 a chief.

18 There were a lot of successes that were
19 related to SRB enforcement, but there were also a
20 lot concerns related to SRB enforcement. And some
21 of those concerns involved the use of overtime.
22 We did surveillance on a fairly regular basis, and
23 sometimes we would use SRB enforcement to do that
24 and sometimes we would use SWAT or others to do

1 it. And somehow the other units managed to do it
2 without a lot of overtime, but SRB enforcement's
3 overtime was always quite significant. And I made
4 a pledge basically to Mayor Coleman when I got
5 promoted that I was going to maintain our overtime
6 budget, and I did up until the very last year when
7 the circumstances didn't allow that. But I was on
8 budget with overtime. And to do that, you have to
9 make some hard decisions.

10 And so for a lot of different reasons,
11 I decided that abolishing the SRB enforcement
12 section was going to be the way that I would be
13 able to create some of those other positions and
14 to address some of the concerns that had been
15 raised about overtime and just the mission of SRB
16 enforcement.

17 Q. So what -- do you recall whether that
18 happened late 2014, early 2015?

19 A. I think both.

20 Q. Okay. Did you know Karl Shaw before
21 this lawsuit was filed?

22 A. I'm sure that we had, you know, some
23 knowledge of each other at some point in time, but
24 I don't think that I've ever worked with him or

1 supervised him directly.

2 Q. You -- did you know -- at the time you
3 eliminated SRB, did you know he was there?

4 A. I believe that he was in a meeting that
5 I had with SRB enforcement section. You know, I
6 know a lot of people, and I know a lot of names
7 and I know a lot of faces, sometimes they match
8 and sometimes they don't. But I believe that Karl
9 might have been at that meeting, and so I would
10 have been aware at that point in time that he was
11 in SRB enforcement.

12 Q. Was that an informational meeting or a
13 meeting to announce that you were going to change
14 SRB?

15 A. Both.

16 Q. Both? Okay.

17 A. Yeah. I know that -- I know that there
18 was an awful lot of rumors flying, but I wanted to
19 be involved in the discussion so that I could
20 answer questions.

21 Q. If you remember, at the point in time
22 you had that meeting, was Sergeant Moore
23 already -- had he already moved out of SRB and was
24 in narcotics?

1 A. I have no idea.

2 Q. Okay. Were you aware at the time you
3 met with Shaw, and not just him, but others at
4 SRB, were you aware of any accolades or awards
5 that Karl had received for work he had been doing
6 on hotels that were centers of drug trafficking
7 and other illegal activity?

8 A. I would say that I was just generally
9 aware of a lot of the recognitions that had been
10 given to many of our employees.

11 Q. Okay.

12 A. You know, I mean, we have award
13 ceremonies twice a year. I read the newspaper, I
14 read Facebook, you know, the accolades about our
15 division employees. So I certainly would think
16 that I was aware, but not in particular, but, you
17 know.

18 Q. Okay.

19 A. Not singling that particular thing out.

20 Q. So I want to talk a little bit about
21 Officer Shaw's efforts to find another job after
22 learning that SRB -- the unit, part of SRB he was
23 in was going to be disbanded.

24 A. Okay.

1 Q. There's a time limit, right? On how
2 long officers have to apply for open positions
3 before they can just be reassigned?

4 A. The contract describes in great detail
5 what the rules are as far as giving abolishment
6 notices and all that. I specifically discussed
7 the process with the union and gave them far --
8 basically twice the amount of time that the
9 contract requires to start looking for other jobs
10 and the number of postings that would be available
11 to them.

12 Q. Okay. I'm just trying to make sure
13 it's clear on the record that he did have some
14 time constraints, it wasn't that he could just
15 take forever, he was given the right to pick, if
16 available, open assignments based on his
17 qualifications, seniority for a period of time.
18 And then if he couldn't get a job after that, then
19 he was subject to being assigned through the chain
20 of command, is that --

21 A. Ultimately if an abolishment notice was
22 officially provided then, yes, there would be a
23 limited amount of time.

24 Q. Okay. So going back to the

1 investigation and the charges. When you
2 reviewed -- you understood at some point that
3 Officer Shaw felt he had been retaliated against
4 and discriminated against in his efforts to go to
5 narcotics?

6 MR. COGLIANESE: Objection. Go ahead.

7 A. Are you saying that I learned that from
8 the investigation?

9 Q. Yes. I'm asking whether you became
10 aware that one of the issues that Karl Shaw had
11 was -- that he discussed and reported about,
12 whether or not it became a charge is a separate
13 question, did you become aware at any point during
14 the investigation that he had complaints about the
15 process related to him seeking a narcotics
16 assignment?

17 A. Well, I know very -- very -- I know
18 that I knew about complaints about his attempt to
19 get into narcotics. I just don't know if I
20 learned about it as a result of the investigation
21 of Sergeant Moore. I don't know if that was a
22 separate thing that was brought to my attention
23 and that I dealt with or if I learned about it
24 from there and then we dealt with it. But I do

1 know that I'm aware that he had complained about
2 the process of being selected in narcotics.

3 Q. Hang on one second. I want the chain
4 of command stuff on Moore.

5 MR. VARDARO: It's 41. It's either 39
6 or 41, depends on what version you want.

7 MR. GITTES: Hang on, I'm looking. I
8 think we want -- I'm sorry, give me a second here.
9 Okay. I'm going to use -- let's use 41.

10 MR. VARDARO: I know, I'm just
11 wondering whether we already used it.

12 MR. GITTES: Oh, do you have a list?

13 MR. VARDARO: No, I have the list. We
14 didn't already use it, but just --

15 MR. GITTES: I see it right here, 41.

16 MR. VARDARO: Oh, it is? Oh, okay.
17 Then it's in this.

18 MR. GITTES: Okay.

19 MR. VARDARO: They're in numerical
20 order.

21 MR. COGLIANESE: Before you do, let me
22 just double check it against what I got. Thank
23 you.

24 THE WITNESS: Uh-huh.

1 Q. For the record, Chief, you've been
2 handed an exhibit that was previously identified
3 in this case as Plaintiff's Exhibit 41. And the
4 part of it that I want to draw your attention to,
5 but obviously you can look at other parts as you
6 feel necessary, is -- it is paginated 014417 at
7 the bottom dated December 29th, 2015. And it's
8 from Lieutenant Brust addressed to you. I've now
9 learned today that everything is addressed to you,
10 so -- but I would like to know if you recall
11 seeing this? Jeff's pointing out the next page
12 after that is also related.

13 MR. COGLIANESE: So you're talking
14 14419 also?

15 MR. GITTES: Yes.

16 MR. COGLIANESE: So let me just make
17 sure that you've got two sided.

18 THE WITNESS: There's 19.

19 MR. COGLIANESE: Yeah. So they're
20 talking about this page, that page and that page
21 and I assume 20 also? That's the last page.

22 Q. Yeah. They all concern. I'm just
23 asking you to look at them and see if you remember
24 to try to remind you of an issue related to job

1 openings in narcotics.

2 A. If this was part of the package of the
3 investigation, which it should have been because
4 it's listed in the allegations package, then there
5 is a possibility that I've seen them before.

6 Q. Okay. Sitting here today, you don't
7 have a specific recollection of looking at them?

8 A. I don't specifically recall that, no.
9 The --

10 Q. When --

11 A. The outcome of those two allegations
12 was a DCC. So in my review of the investigation,
13 I'm looking for evidence in support of those that
14 have been sustained and recommended for charges or
15 written reprimands. So I could have seen them and
16 decided that they weren't relevant, or I could
17 have just reviewed them and not taken any further
18 action on reading that. But I do know that I was
19 involved in decision-making on how to handle a
20 posting in narcotics.

21 Q. Okay. Well, let me -- let me just try
22 to go over some pieces of information that I will
23 represent to you come out of the IAB investigative
24 report --

1 A. Okay.

2 Q. -- and see if they bring to mind
3 anything.

4 Did you -- do you recall that it came
5 to your attention that Sergeant Moore, with
6 Commander Cameron's consent, had a preferred
7 candidate for an initial opening in narcotics?

8 MR. COGLIANESE: Objection.

9 Q. His name -- his name was Ehrenborg?

10 MR. COGLIANESE: Objection. Go ahead.

11 A. I believe that I know that at this
12 point in time, yes.

13 Q. Okay. You don't remember whether you
14 knew it back then?

15 A. I'm going to say that I believe I did.
16 I just don't know when I got knowledge of that.

17 Q. Do you recall that Sergeant Moore
18 conducted -- sent an invitation to bid to a
19 certain list of officers to let them know about
20 the opening?

21 MR. COGLIANESE: Objection.

22 A. I would say I don't remember
23 specific -- that particular part of this.

24 Q. Is that something that's customarily

1 done when there's an opening?

2 A. I can't say what's customarily done,
3 because I'm not aware of what the 200-plus
4 supervisors --

5 Q. Okay.

6 A. -- do --

7 Q. Okay.

8 A. -- with regard to advertising their own
9 openings.

10 Q. All right. Were you aware that at the
11 time that Sergeant Moore was pursuing the opening,
12 you know, for candidates and preparing to make a
13 recommendation for selection, he was already under
14 investigation? In other words, the complaints
15 about him had been made and an IAB file had been
16 opened, investigation had been opened?

17 A. I'm not sure I understand the question
18 as far as the chronology that you're asking.

19 Q. I'm asking you if you were aware that
20 Sergeant Moore was permitted to conduct the
21 process of considering candidates for the initial
22 opening in vice while he was being investigated by
23 IAB?

24 A. Oh, I'm certainly aware of that now.

1 That would -- unless you're relieved of duty, you
2 do the responsibilities of the job, so there was
3 no particular notice that I would have taken of
4 any supervisor trying to fill an assignment unless
5 I was somehow asked to be involved in the posting
6 of it or something else, which, you know, for some
7 jobs, they had to ask for my permission to post,
8 but others they didn't.

9 Q. Do you now remember that Sergeant Moore
10 was engaging in this inter -- selection process --
11 hang on one second.

12 Do you recall that during the process
13 where Moore was doing -- you know, overseeing and
14 conducting the selection process, initial phase of
15 it, complaints had already been made about him
16 making racist comments and threats?

17 A. Well, I was aware that Sergeant Moore
18 was under investigation until the investigation
19 was over. And that's -- that's it. I mean, I
20 don't recall that there was any connection between
21 the two until it became an issue that there was an
22 allegation that he had probably not done it under
23 the most desirable circumstances.

24 Q. Well, you knew -- you had already

1 received Sergeant Williams' letter, had you not?
2 By the time that this vice squad hiring process
3 had started or selection process?

4 MR. COGLIANESE: Objection. Go ahead.

5 A. Like I said before, I believe. I don't
6 know when I got that letter --

7 Q. Okay.

8 A. -- but --

9 Q. What date is this?

10 A. -- I know it was earlier than this.
11 And I don't know when that selection process was,
12 so that's --

13 Q. All right.

14 A. -- my -- I -- if -- I'm not sure what
15 you're asking. I knew that he was under
16 investigation and I knew that at some point in
17 time there was a question about the manner in
18 which he sought candidates or disregarded
19 candidates for that particular opening in
20 narcotics.

21 Q. I'm just trying to see whether you will
22 agree with me that you knew he was under
23 investigation not just for theft of time and other
24 things, but for alleged racism?

1 A. Yeah, I knew what he was under
2 investigation for.

3 Q. Okay. So --

4 A. To some degree.

5 Q. And during -- at a certain point in the
6 narcotics job selection process, you became aware
7 there were issues about it because you ordered
8 them to redo the selection process, right?

9 A. That is correct.

10 Q. And the reason that you ordered them to
11 redo the selection process is that you found out
12 that Officer Ehrenborg had been given the
13 assignment that Sergeant Moore, with Commander
14 Cameron's permission, had made him the -- started
15 the process with him as a preferred candidate,
16 right?

17 MR. COGLIANESE: Objection.

18 A. I -- I know that what I was told was
19 that he wanted Ehrenborg and that he had found a
20 way to get to Ehrenborg. And when it was
21 described how he got there and I understood it,
22 that I did not agree with that method.

23 Q. Okay. Now, the how he got there -- and
24 so after he recommended Ehrenborg, and I don't

1 know if you remember the details, it came to your
2 attention, you considered it and you said redo it?

3 A. Right.

4 Q. Rebid it?

5 A. Yes.

6 Q. Okay. Now, the process by which
7 Sergeant Moore did this came to your attention,
8 did it not?

9 A. Yeah. I mean, at least some parts of
10 the process came to my attention or else I
11 wouldn't have made the change.

12 Q. And he wrote a letter to you about it?

13 A. Sergeant Moore?

14 Q. Yeah.

15 A. He could have.

16 Q. Okay. Let me find --

17 A. Was that prior to him posting the job?

18 Q. No. No, it wasn't. Let me get you the
19 letter. I'm just trying to --

20 MR. VARDARO: It's 18.

21 MR. GITTES: Has that been marked?

22 MR. VARDARO: It's previously marked.

23 MR. VARDARO: 19.

24 Q. May I?

1 A. You want to touch it?

2 Q. So for the record, Chief, you've been
3 handed what was previously identified as
4 Exhibit 19.

5 A. Okay.

6 Q. So do you recall getting that -- or
7 seeing it?

8 A. Not specifically, no.

9 Q. Okay. In hindsight, do you now recall
10 that Sergeant Moore lied to you in this document?

11 MR. COGLIANESE: Objection. Go ahead.

12 A. Where are you talking about?

13 Q. Well, he says in this letter addressed
14 to you at least, "Without exception, all the
15 candidates passed with the agreement that they
16 would be considered if a less senior candidate
17 would accept the position."

18 See that sentence?

19 A. Uh-huh.

20 Q. You know now from the investigation
21 that that's simply not true, don't you?

22 MR. COGLIANESE: Objection.

23 A. I believe that the information that I
24 received indicated that some people had not

1 actually passed or agreed to that particular
2 statement, yes.

3 Q. And other people verified that he had
4 misled them about a Spanish speaking requirement.
5 Do you recall that also came out of Decker's
6 interviews?

7 A. Something to that effect, yes.

8 Q. But he was never charged with lying,
9 was he? Not about this?

10 A. Correct. Correct.

11 Q. And he -- in addition, a number of the
12 individuals who he had falsely claimed had passed
13 were black officers, you also learned that, didn't
14 you?

15 MR. COGLIANESE: Objection. Go ahead.

16 A. I don't recall the race or ethnicity or
17 gender of all of the people that he might have
18 passed, but I do know that there were some of --

19 Q. And as far as I can tell from the
20 records -- and as far as I can determine, and
21 please tell me if you have reason to believe I'm
22 wrong, you did not make any specific inquiries
23 about that to Sergeant Decker?

24 A. About what?

1 Q. About the race -- racial make-up of the
2 people he misled or falsely claimed they had
3 passed?

4 A. To Sergeant Decker?

5 Q. Or to anybody.

6 MR. COGLIANESE: Objection.

7 A. I can't say that I did or did not.

8 Q. Okay. Was it the practice when you
9 were supervisor of IAB that if an investigating
10 sergeant were contacted, asked questions or asked
11 to do something, they put it in their notes? I
12 think there's a part of the file that lists all of
13 the investigator's contacts and communications?

14 A. You mean for internal affairs?

15 Q. Yeah.

16 A. There is a notes -- like a chronology
17 of -- of what the investigators are doing.

18 Q. And that would include when they're
19 given instructions or contacted by their
20 supervisors?

21 A. In general it should, yes.

22 Q. Now, as I understand it -- and this is
23 in exhibit previously marked -- I'm just going to
24 give it to her unless it's a --

1 MR. COGLIANESE: What's the number?

2 MR. GITTES: 20, sorry.

3 MR. COGLIANESE: That's okay.

4 Q. There -- I've handed you what's been
5 previously identified by a different witness
6 Exhibit 20.

7 A. Uh-huh.

8 Q. Can you take a moment to look at it?
9 Have you seen that before?

10 A. This is a routing sheet that doesn't
11 have my name on it.

12 Q. Well, doesn't it refer to an
13 instruction from you?

14 A. It does.

15 Q. Okay. Do you remember giving that
16 instruction?

17 A. Absolutely.

18 Q. Does that suggest to you when your
19 decision about rebidding the job or your order
20 about it occurred?

21 A. It appears that that decision was --
22 would have been made in January of '15.

23 Q. Okay. Now, let's talk a little bit
24 about after -- so at the point you gave that

1 order, let me see if I understand -- or let me ask
2 you to confirm what you did or didn't know. You
3 knew there was a preferred white candidate that
4 Sergeant Moore, with Commander Cameron's
5 permission, was the preferred candidate they were
6 trying to get to, right?

7 A. That Sergeant Moore was trying to get
8 to and/or Commander Cameron was trying to get to?

9 Q. Well, Sergeant Moore with Cameron's
10 consent.

11 A. Yes.

12 Q. That there were some black officers who
13 were candidates for the job who had more seniority
14 than Ehrenborg?

15 A. Everyone above Officer Ehrenborg had
16 more seniority.

17 Q. Okay. Many -- some of them were black?

18 A. I believe so, yes.

19 Q. And some of the most senior people, in
20 fact, at this time, were a couple of black
21 officers, including Whitney Lancaster and Karl
22 Shaw?

23 A. I would have to see the list to be able
24 to affirm that, but everybody above Ehrenborg was

1 more senior to him. So it doesn't matter if
2 they're one day more senior or lots more senior.

3 Q. Do you know Whitney Lancaster?

4 A. I know of him and I know who he is,
5 yes.

6 Q. You've met him?

7 A. Yes.

8 Q. Okay. But never supervised him or did
9 you?

10 A. Never directly supervised him.

11 Q. I mean, you -- did you have more
12 familiarity or the same as you had with Karl Shaw,
13 just in passing or did you actually have more
14 knowledge of him?

15 A. I think Officer Lancaster's more well
16 known to me because his name has come up in more
17 circumstances that would come to my attention.

18 Q. Okay. Some of them more recent?

19 A. Oh, absolutely.

20 Q. Yeah. Okay. I don't want to get
21 involved with things that I'm not involved with.

22 MR. COGLIANESE: Yeah, and I would
23 instruct you not to talk about --

24 THE WITNESS: I'm not going to.

1 MR. COGLIANESE: Thank you.

2 Q. So when you -- you also -- and I take
3 it at the point you had the job rebid, someone,
4 and I don't know whether it was at your request or
5 not, asked Sergeant Moore to explain what he had
6 done and why. I'm referring to 19, I'm trying to
7 understand --

8 A. Why that letter was written?

9 Q. -- why that letter was written?

10 A. Someone might have asked him for it or
11 he might have volunteered to do it to try to
12 justify his position. I know that sometimes when
13 they hear that I'm going to make a decision, they
14 try to override my decision by more justification.
15 So I don't know if it was specifically requested
16 or directed, so I can't answer what originated
17 this particular letter.

18 Q. Well, let me ask you this: Would you
19 have seen the letter or at least have been told of
20 its contents before you made the decision?

21 MR. COGLIANESE: Which letter are we
22 talking about? Exhibit --

23 MR. GITTES: 19.

24 MR. COGLIANESE: -- 19? Okay.

1 A. I would need more information before I
2 could answer that.

3 Q. Well --

4 A. Because I don't know when the job was
5 posted and I don't know when it was reposted.
6 This letter was written on the 23rd. Cameron's
7 routing sheet indicates that I made a decision by
8 the 28th, but I don't know if I had made the
9 decision even prior to the 23rd and he responded
10 to that. So I -- I cannot give you a timeline. I
11 don't know when the job got posted the first time
12 and when it got posted -- reposted again
13 subsequent to that. We sometimes have a schedule
14 for when postings occur, and so I don't know the
15 timeline without more information. This isn't
16 enough for me to be able to give you an answer --

17 Q. Well, I mean --

18 A. -- to how this originated.

19 Q. -- Plaintiff's 20 was forwarded to you
20 and it has an attachment which refers to the
21 issues. Wasn't this letter part of what's being
22 forwarded to you about all of this?

23 MR. COGLIANESE: Objection.

24 A. This does not indicate it was forwarded

1 to me.

2 Q. Okay.

3 A. As I said before, all correspondence is
4 addressed to me.

5 Q. Okay.

6 A. And this is -- there's no indication
7 that this letter was forwarded to me. It might
8 have been shown to me, but this routing sheet does
9 not indicate that at all.

10 Q. After -- so after -- after you had
11 rebid, were you made aware of the process that was
12 to be followed?

13 A. I'm not sure what you're referring to.
14 The process to be followed is follow the contract.

15 Q. Okay. Did you become aware that
16 Sergeant Moore was ordered not to interview
17 certain individuals for the position because of
18 the pending complaints against him?

19 MR. COGLIANESE: Objection. Go ahead.

20 A. I don't recall specifically. That
21 might very well have happened, I just don't recall
22 the discussion.

23 Q. Okay. And when I say, "complaint," I'm
24 talking about the IAB investigation that was

1 ongoing.

2 A. I understand.

3 Q. Okay. Were -- did you become aware of
4 who would -- did you know that Commander Cameron
5 and Lieutenant Brust decided to interview the two
6 most senior candidates who were black officers,
7 Whitney Lancaster and Karl Shaw, in person?

8 MR. COGLIANESE: Objection. Go ahead.

9 A. Are you asking me if I'm aware that
10 that occurred?

11 Q. I'm asking if you were aware of it at
12 the time?

13 A. I don't believe that I was aware of
14 that at the time.

15 Q. Hang on one second.

16 So is it -- in your experience in the
17 department, normal for a commander and a
18 lieutenant to interview in person a couple of --
19 from -- two officers from among other officers who
20 are seeking an assignment?

21 MR. COGLIANESE: Objection.

22 A. Well, I would say again that I don't
23 know the practices of all the commanders with
24 regard to filling assignments. There may be some

1 that do it with regularity. Certainly if it's a
2 commander interviewing a lieutenant for a
3 position, that would happen with regularity. If
4 you mean specifically a commander interviewing an
5 officer rank for a position, I would think that
6 that doesn't occur very often, but I can't say
7 with any knowledge how often that may or may not
8 occur.

9 Q. Okay. Have you -- were you ever
10 interviewed as an officer by a commander for a bid
11 on an assignment?

12 A. The job description manual and the
13 assignment process did not occur in the same way
14 when I was an officer. It was, who do you know.

15 Q. Okay.

16 A. And I was offered that first shift job
17 by a captain at the time, so an officer was
18 asked --

19 Q. Okay.

20 A. -- by the captain at the time if I
21 wanted that job on first shift. But that's not
22 the process that was in place when I was an
23 officer on the street or of the officer rank.

24 Q. Okay. After -- so you don't know just

1 how unusual -- I'm gathering from what you told me
2 it is -- you -- at least as far as you knew, it's
3 unusual for a commander and a lieutenant to pick
4 two applicants for an opening out of a list of
5 many other applicants to interview them in person?

6 A. What I think I testified to is that
7 I -- I don't know how frequently it happens. I
8 don't know if there's some commanders that do it
9 all the time for, you know, particular
10 assignments. I know when I was the internal
11 affairs commander and I was bringing in 15 more
12 sergeants, I personally interviewed all of those
13 15 positions, and the 40 or 50 plus sergeants that
14 applied. So even though there wasn't a direct
15 report to me, my rank, I did interviews. So for
16 me in internal affairs, it was very common for the
17 commander to be involved in interviews.

18 But I can't say for other commanders
19 what their practice is. You know, for patrol, I
20 wouldn't think that it happens very often, because
21 it's seniority based, it has nothing to do with,
22 you know, exceptional skills. But a commander
23 over SWAT or something else might very well sit
24 down with you and want to know more about your

1 skills and, you know, thought process on why you
2 want to be a SWAT officer or a K-9 officer or
3 something like that.

4 Q. Yeah.

5 A. So I just can't answer that for
6 everyone else.

7 Q. Did you ever -- did you become aware at
8 some point before this lawsuit was filed, before
9 charges were filed, that Officer Shaw had reported
10 to Sergeant Decker and had complained about the
11 manner in which he was interviewed by the -- by
12 Commander Cameron and Lieutenant Brust?

13 A. Well, I am aware of that because it's
14 part of this, but I don't have any recollection of
15 knowing it before the investigation took place.

16 Q. Okay. Do you -- I'm not asking you
17 about before an investigation took place.

18 A. I thought you did.

19 Q. I'm talking about while the
20 investigation was going on. At some point, did
21 you become aware that Cameron and Brust had done a
22 personal interview with Lancaster -- separate
23 personal interviews with Lancaster and Shaw?

24 A. I might very well have. I don't

1 recall. The investigation of Moore was quite
2 lengthy. And somebody might have brought that to
3 my attention as a bit of information, but I think
4 you're saying that that occurred after I had
5 ordered it to be reposted.

6 Q. No, actually it didn't. It occurred
7 before. That was my mistake. I misinformed you.

8 A. Okay.

9 Q. It -- just to make it clear, before you
10 re -- ordered the rebid after Sergeant Moore
11 recommended Ehrenborg, I will represent to you,
12 and your counsel can confirm it, but that Sergeant
13 Moore had been prohibited or ordered not to make
14 contact with certain people and Cameron and Brust
15 conducted the personal interviews with Lancaster
16 and Shaw.

17 A. Okay.

18 Q. Do you remember whether you learned
19 that either before you vacated the -- you know,
20 the selection or immediately after or --

21 A. I was probably told that with the
22 entire -- you know, here's what happened and what
23 should we do about it. And then I ordered the
24 rebid.

1 Q. Okay. So here's one question that we
2 hope you can answer for us.

3 A. Okay.

4 Q. And there's -- just put it in question
5 form: Did you know that Officer Shaw recorded his
6 interview with Brust and Cameron? And that he
7 submitted -- he told Sergeant Decker that he had
8 and the information related to the interview were
9 provided to Decker?

10 A. I don't recall that specific
11 information.

12 Q. So sitting here today, this is the
13 first you've heard of it?

14 A. I can't say that --

15 Q. Okay.

16 A. -- with any certainty.

17 Q. Okay. I will represent to you that on
18 that recording, which we've been through with
19 Lieutenant Brust, among others, on the record,
20 Officer Shaw made it clear to both Cameron and
21 Brust that he would take the narcotics position
22 even though Moore was the sergeant?

23 MR. COGLIANESE: Objection.

24 Q. And if -- and then after the interview,

1 Ehrenborg was recommended for the position, not
2 Officer Shaw, and in no documents we've seen, nor
3 in any testimony we've gotten, is there any
4 indication that Officer Shaw ever withdrew or ever
5 changed his mind before Ehrenborg was announced as
6 the preferred -- as the recommended candidate.

7 My question to you is: When you
8 ordered the rebid, was there some reason you
9 didn't order that the position go to Karl Shaw,
10 who is the most senior person who was considered
11 and had indicated he would take the job?

12 MR. COGLIANESE: Objection. Go ahead.

13 A. I don't recall what the -- what I knew
14 at that time. I don't recall if I felt that he
15 was entitled to it based on his statement of
16 wanting that job, if I knew that everybody more
17 senior than him had turned it down. I just knew
18 that it did not sound like it had been done
19 appropriately and that it should be redone.

20 I have no idea what all I knew about
21 that. I don't know if anybody even suggested that
22 we just take Officer Shaw.

23 Q. Okay. So at least as far as you can
24 recall sitting here today, Commander -- neither

1 Commander Cameron or Lieutenant Brust indicated to
2 you that they had interviewed Karl Shaw and he had
3 indicated he was interested in the position?

4 A. I can't say with any certainty if they
5 -- if I was aware of that at that time or not. I
6 don't believe that the information that I received
7 was directly from them.

8 Q. Okay.

9 A. I believe it came from their deputy
10 chief.

11 Q. That was Gray at the time?

12 A. That doesn't sound right to me.

13 Q. Okay.

14 A. I -- I don't know.

15 Q. Quinlan?

16 A. It was narcotics, that would have been
17 in Homeland Security, so, yes, it probably would
18 have been Gray.

19 Q. Now, I want to ask a few questions, but
20 I don't want to -- I'm trying to be as efficient
21 as I can here.

22 A. Okay.

23 Q. And we don't know that I want to use up
24 your time or ours playing recordings of things

1 that you've never heard before or read before.

2 There were a number of issues brought
3 up during the investigation about the kinds of
4 questions and statements that Commander Cameron
5 made during his interviews of both Lancaster and
6 Shaw. Have you -- have you read the transcript of
7 that interview?

8 A. Which particular interview? Of
9 Commander Cameron?

10 Q. Cameron's interview of Shaw and
11 Cameron's -- let's just say Shaw. Cameron's
12 interview of Shaw for the narcotics position?

13 A. I don't recall reading a transcript of
14 that particular interview.

15 Q. Let me mention a few things to see if
16 it brings something to mind. Do you recall
17 reading or hearing an interview involving
18 Commander Cameron in which he brought up the
19 Ramparts controversy in LA and talked to the
20 candidate, in this case Shaw, about productivity
21 and being worried about ethics?

22 A. Those words sound familiar to me. I
23 don't know if they're part of the summary that I
24 read, but I don't think I read a transcript. But

1 I do believe I've heard something along those
2 lines being mentioned.

3 Q. Do you recall reading or hearing there
4 was conversation of -- from Cameron with Karl Shaw
5 in the interview about how he hadn't done any work
6 in 2011 and 2012? Of course this interview was
7 happening in 2015. Does that ring a bell?

8 MR. COGLIANESE: Objection.

9 A. If it's included in the summary, then
10 that might be where I have seen it.

11 Q. And do you recall hearing Officer Shaw
12 say, that's not true, I've made a lot -- I was
13 very productive at the time, and there's some
14 disagreement about it. Does that sound familiar?

15 A. It sounds a little familiar, yes.

16 Q. Do you recall learning, either from the
17 summary or other sources, that similarly, when
18 Lancaster was interviewed, again, both by Cameron
19 and Brust, that he -- the Ramparts thing was
20 brought up with him, there were questions about
21 him not being -- I haven't memorized it, we have
22 the transcript if you really want to see it, but
23 words to the effect, you know, this is -- I don't
24 remember whether they actually used the word, but

1 implying he was lazy and didn't do enough work.

2 Do you recall something like that?

3 MR. COGLIANESE: Objection. Go ahead.

4 A. If that was included in the summary,
5 then that would have been probably where I read it
6 or --

7 Q. Would it -- to your knowledge, isn't it
8 the case that none of the other candidates at the
9 time that these interviews were being conducted
10 had been told anything about Ramparts or asked
11 about their ethics, anything remotely like that?

12 A. If that's what was submitted --

13 MR. COGLIANESE: Objection.

14 A. -- into the investigation, then, you
15 know, I would trust the investigation to explain
16 if that -- if similar comments were made. But I
17 don't even know if they were asked, so I --

18 Q. Do you -- do you remember -- would it
19 concern you as chief if only two black senior
20 officers were interviewed in person off a list of
21 potential candidates for an opening while all
22 other candidates, many, if not -- well, most of
23 whom are white, were simply called and contacted
24 by a sergeant?

1 MR. COGLIANESE: Objection.

2 A. Well, it would concern me if it was
3 done for discriminatory reasons. It would not
4 concern me if it was done based on separating
5 people from, you know, people that are making
6 allegations against each other or one side or vice
7 versa. If it was a decision that was made in the
8 best interest of the division of police, the
9 interview should -- should take place in that way
10 to protect, you know, any conflict of interest,
11 not necessarily asking some questions of some
12 people and not questions of other people. If it
13 was done for discriminatory reasons, then
14 absolutely, it would -- it would concern me.

15 Q. Well, why wouldn't the commander make
16 sure that Sergeant Moore asked the same kind of
17 questions and bring up the same kinds of issues
18 with people he talked to?

19 MR. COGLIANESE: Objection.

20 A. You would have to ask Commander Moore.

21 Q. Did you ask him?

22 A. I don't think that I knew enough about
23 that particular aspect of things to have that
24 conversation. And it's not my job to supervise

1 Commander Cameron as much as it is the deputy
2 chief that oversees that person who would have
3 been the one telling me about the circumstance in
4 the first place, but --

5 (Mr. Vardaro left the room.)

6 Q. Well, let me just put it this way:
7 Whatever you read in the summary and other
8 documents that came to your attention that led you
9 to have it rebid, you didn't make any inquiries of
10 the Commander or Lieutenant Brust about what they
11 asked Shaw and Lancaster, why they asked it,
12 whether they had made sure that the other people
13 being contacted were submitted to the same kinds
14 of questions?

15 MR. COGLIANESE: Objection.

16 A. You asked if I made any inquiries into
17 that? Not to my knowledge, no. Other than
18 telling Deputy Chief Gray, because the more that
19 we talk about it, the more I remember, I think it
20 was him that told me about this and feeling that
21 he had a grasp of what was going on and would
22 address it.

23 Q. You -- you also, as I understand it,
24 became aware of the fact that Commander -- either

1 Lieutenant Brust or Commander Cameron, I'm not
2 sure which, it may have been both of them, ordered
3 Moore not to talk to Whitney Lancaster. Do you
4 recall that?

5 MR. COGLIANESE: Objection.

6 A. I know that I'm aware of it now.

7 Q. You don't believe you knew that there
8 was an instruction -- is it -- in the
9 specifications, there is an issue that came
10 through a routing sheet about insubordination as
11 to the order given to Moore not to communicate
12 with Lancaster. Do you recall that?

13 A. Right. He got a DCC for it.

14 Q. Yeah, got a DCC for it.

15 And were you aware that from the
16 documents in this case, Moore not only spoke to
17 Lancaster right after he was interviewed by the
18 Commander and Brust, but he e-mailed him to come
19 into his office before he made any decision about
20 whether to take the job, did you --

21 A. What was the question?

22 Q. Were you aware of that?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. Well, I might have been aware of that

1 at some point in time, but I don't know when.

2 Q. Okay. And do you believe you were
3 aware of the fact that not only did Moore e-mail
4 Lancaster in violation of his order not to have
5 contact with him, then had him come to his office
6 and spoke with him about the position, and that
7 afterwards, I don't recall, it may have been the
8 same day or the day after, Lancaster said -- sent
9 a letter to the Commander and Brust saying he
10 decided not to take the position, this is like
11 shortly after this conversation with Moore?

12 (Mr. Vardaro entered the room.)

13 MR. COGLIANESE: Objection.

14 Q. Do you recall becoming aware of that?

15 A. Perhaps as part of reading this summary
16 or the investigation, but no -- no idea of when I
17 became aware of it.

18 Q. Okay. Do you recall that in his
19 interviews, or in the interview -- in the
20 investigation summary, Lancaster described his
21 meeting with Moore in ways which indicated that
22 he -- he felt -- not only Moore, but also
23 Commander Cameron was trying to push him not to
24 take the position? Does that ring a bell?

1 MR. COGLIANESE: Objection.

2 A. Overall, the recollection that I have
3 is is that they wanted Officer Ehrenborg and that
4 was their goal. And so alternatively, they would
5 not want somebody else to take the job and they
6 would use whatever means, you know, to do that
7 that they could accomplish it hopefully within the
8 rules. But -- so that's my take on it was that
9 they wanted Ehrenborg and they made efforts to get
10 to Ehrenborg.

11 Q. And that's the reason you think -- you
12 would agree with me that Sergeant Moore was
13 flagrantly insubordinate as I've described it?

14 MR. COGLIANESE: Objection.

15 A. Well, he was -- he was charged with
16 misconduct and got a DCC for failing to follow an
17 order. I think it's in here somewhere, but you're
18 describing it as insubordination, and it was found
19 to be, I believe, failure to follow an order.

20 Q. So -- okay.

21 A. Well, the contract addresses that. You
22 can read the FOP contract.

23 Q. Okay.

24 A. It says, insubordination should be

1 reserved for the most egregious cases and lower --
2 lower charges should be used prior to the charge
3 of insubordination.

4 Q. Okay. So when he was told not to
5 contact -- contact or communicate with Lancaster,
6 a person who has made a -- there's an issue about
7 whether he's discriminating against him, it's
8 pending investigation, he not only e-mails him, he
9 talks to him, and that talk is part of an effort
10 to prevent him from coming to the bureau where
11 that sergeant, who's accused of racism, worked.
12 And you think that's not critical misconduct?

13 MR. COGLIANESE: Objection.

14 A. I didn't say that.

15 Q. I'm asking you. Isn't that critical
16 misconduct?

17 MR. COGLIANESE: Objection.

18 A. That he -- that he spoke to Officer
19 Lancaster?

20 Q. That he did all of those things. He
21 e-mailed him, he spoke to him, he actively
22 discouraged him from coming to the bureau where he
23 works, he -- and by the way, Moore admitted he had
24 a very angry conversation with Lancaster in his

1 interview.

2 MR. COGLIANESE: Objection.

3 Q. But as far as you're -- I'm sorry.
4 Were you going to say something?

5 A. It might have been. I -- I don't have
6 all of the information in front of me to be able
7 to properly assess all of that. And you're
8 telling me stuff that may or may not be written
9 down, and I'm not sure if I reviewed it all in
10 that light or if it was even addressed as an
11 allegation for insubordination, other than just
12 failing to follow an order.

13 Q. Well, in the investigation, do you
14 recall that Sergeant Moore admitted to Sergeant
15 Decker -- well, let me back this up.

16 You do recall, do you not, that
17 Sergeant Moore had sent a text message to Officer
18 John Ever -- Evans saying that Lancaster and Shaw
19 better not take the job in vice or I'm going to
20 get them? Do you remember that?

21 A. I didn't have any recollection of it
22 before you just mentioned that, but I think that
23 might have been part of the investigation.

24 Q. Well, if you had become aware of that

1 in the investigation, isn't that quite striking
2 that he would send a text message threatening two
3 people who are trying to get an assignment where
4 he's the sergeant and he's selecting -- he's
5 involved in the selection process?

6 A. Well, you are saying threatening them,
7 but you said that the actual terms were get them
8 and --

9 Q. You don't consider that a threat from a
10 sergeant about if somebody takes a job?

11 MR. COGLIANESE: Objection. Finish
12 your thought if you wanted to.

13 A. I would -- I would just say that that's
14 unspecific.

15 Q. I see.

16 A. "Get them" can be interpreted a lot of
17 different ways. I don't know what his intent was.

18 Q. Which way do you interpret it?

19 A. I'm not going to --

20 MR. COGLIANESE: Finish your thought.

21 A. I'm not going to interpret it without
22 more information.

23 Q. Okay. Well, you knew that -- you knew,
24 if you read the summary, which I believe you had

1 indicated you think you did, you knew that there
2 were multiple witnesses who confirmed that
3 Sergeant Moore was making racist statements using
4 the N word, calling black officers monkeys,
5 threatening to take people out and fight them or
6 beat them, and in two officer's cases, indicated
7 that he actually threatened to take two individual
8 black officers out and kill them. So you had that
9 background, right?

10 MR. COGLIANESE: Objection.

11 A. You're indicating that I knew all of
12 that.

13 Q. Well, did --

14 A. I --

15 Q. If you read --

16 A. I will say that there was information
17 in the investigation. I don't have any personal
18 knowledge of Sergeant Moore doing that. And just
19 because somebody says something happened doesn't
20 mean that it did. Some of it got investigated
21 allegations and some of it didn't as we previously
22 discussed.

23 You know, if -- if you said that
24 somebody made a racist comment five years ago and

1 you can't say who was there, all that kind of
2 stuff, it's not going to get investigated without
3 more information in general, so...

4 Q. But you didn't order it to be
5 investigated more, did you?

6 A. I -- you'll have to be more clear about
7 what I didn't do. You're -- what are you talking
8 about? Because I just gave a hypothetical.

9 Q. Just -- you -- if you read the summary
10 and you read the routing sheet, you knew that
11 there were multiple officers, it wasn't one, it
12 wasn't two, it was three, it was more who
13 testified to having heard Moore make
14 discriminatory, racist comments?

15 MR. COGLIANESE: Objection.

16 Q. You did not -- if you had concerns that
17 you wanted more specifics, you did not direct
18 Sergeant Decker or anybody else to get the more
19 specifics, did you? About those statements?

20 A. Correct.

21 MR. COGLIANESE: Objection.

22 Q. Okay. In addition, you had information
23 from the summary that Moore -- in addition to that
24 information, that Moore sent a text message

1 indicating that he would get Karl Shaw and Whitney
2 Lancaster if they took the position in narcotics?

3 A. If it was included in the
4 investigation, then, yes, I had that information.

5 Q. Okay. And your reaction was oh, well,
6 who knows what he means; is that --

7 MR. COGLIANESE: Objection.

8 A. I did not say that.

9 Q. That was your testimony a moment ago,
10 but if you want to change your testimony, go right
11 ahead.

12 MR. COGLIANESE: Objection. You're
13 mischaracterizing.

14 A. That is correct.

15 Q. Okay. Well, then how did you --

16 A. I did not say, oh, well, we're just
17 going to leave it alone.

18 Q. Okay. Well, then what did you do?

19 A. I took the investigation that we had
20 and I made rulings upon that. I had a
21 disciplinary hearing with Sergeant Moore, and I
22 made a recommendation to the Director of Public
23 Safety.

24 Q. With respect to the discrimination

1 claim that Officer Shaw was unable to take a
2 position in narcotics because of Sergeant Moore's
3 behavior and his text threat, what did you rule?

4 MR. COGLIANESE: Objection.

5 Q. Did you recommend his termination?

6 A. You're talking about a lawsuit.

7 Q. No. I'm talking about the IAB
8 investigation. You keep referring to the portion
9 of the investigation regarding overtime and other
10 financial issues. I told you I would like to
11 focus today on the discrimination, race issues.

12 With respect to this information I just
13 reviewed with you that you indicate that if it was
14 in the report, you would have been aware of it,
15 I'm asking you: Did you recommend charges against
16 Sergeant Moore?

17 MR. COGLIANESE: Objection.

18 A. For what?

19 Q. For sending a text that threatened to
20 get two officers if they took a job where he was
21 working in narcotics? For him making racial slurs
22 not to one, not to two, but more officers using
23 the N word, calling back officers monkeys,
24 threatening to take them out back and fight them,

1 for lying to you about whether or not he had
2 actually interviewed and gotten agreements from
3 officers to pass on the job when, in fact, he
4 hadn't. Did you ever consider charges for any of
5 those?

6 MR. COGLIANESE: Objection.

7 A. Those were never presented to me as
8 potential charges to my knowledge. And, no, I did
9 not initiate any departmental charges for things
10 that he wasn't charged with.

11 Q. Okay. You also became -- I think we
12 mentioned earlier that he had ordered a lightning
13 link. Do you recall that?

14 MR. COGLIANESE: Objection.

15 A. What was the question?

16 Q. As I recall, you became aware at some
17 point during the investigation, that Sergeant
18 Moore had ordered a lightning link?

19 A. I became aware of it at some point in
20 the investigation or far after the investigation.
21 I'm not sure which.

22 Q. Okay. Well, if -- as the chief,
23 putting yourself in Karl Shaw's shoes as an
24 officer, if you've become aware that the sergeant

1 where you're trying to get a job is texting people
2 that he's going to get you if you take it, he has
3 ordered an illegal device to make a weapon
4 automatic despite the law, he has made numerous
5 racist comments about black officers, including,
6 according to two people, a threat to violently
7 hurt or kill two particular black officers.
8 Wouldn't you feel a little uncomfortable about
9 taking a job where he's your boss?

10 MR. COGLIANESE: Objection.

11 A. You're asking me to think like Officer
12 Karl Shaw does?

13 Q. Yes.

14 A. And I'm not sure that I'm able to do
15 that, because I haven't had the same experiences
16 that he has.

17 Q. Okay.

18 A. But if he were to be uncomfortable
19 about that, certainly those things would be
20 something that could cause that.

21 Q. And based on your training in EEO, is
22 it your claim that sending on e-mail like that and
23 engaging in that kind of behavior would not deter
24 people for having raised concerns about a

1 sergeant's racism or discriminatory behavior?

2 MR. COGLIANESE: Objection.

3 A. I'm trying to make sure I understand
4 the question. Do I understand how an e-mail or
5 text message could deter somebody from --

6 Q. Well, let's take that first.

7 A. Okay. What's the question?

8 Q. Can you -- do you agree that an e-mail
9 from somebody who will be your boss in a
10 prospective position saying, if you take it, I
11 will get you, would deter many people, many
12 reasonable people from taking the job?

13 MR. COGLIANESE: Objection.

14 A. It could.

15 Q. Okay. In your -- in your training of
16 EEO, is it your understanding that a sergeant who
17 says, I sent the text because I was upset that
18 they claimed I was a racist or discriminating,
19 that that's not retaliation?

20 MR. COGLIANESE: Objection.

21 A. So he -- you're telling me that he sent
22 that message retaliating against them because they
23 had called him a racist?

24 Q. I'm telling -- I'm saying to you that

1 in his interview with Sergeant Decker, which was
2 summarized, he admitted that he sent the text
3 because Shaw had -- not just Shaw, but Shaw was
4 included, had accused him of being a racist?

5 MR. COGLIANESE: Objection.

6 Q. Is -- according to you as chief, is
7 that a retaliatory act under your policies or the
8 law?

9 MR. COGLIANESE: Objection.

10 A. We certainly think it's worth
11 investigating, you know. If we have information
12 of that sort, then I would certainly be interested
13 in a better understanding, you know, that.

14 Q. Would you have expected your chain of
15 command, if they knew the sequence of events about
16 the text message, as well as the other information
17 in the interviews about people saying he made
18 racist comments and all the other stuff we've been
19 through, should have asked for further
20 investigation as you just suggested?

21 MR. COGLIANESE: Objection.

22 A. I will -- I will address that in the
23 sense that there are points in time in a number of
24 lengthy or very complicated investigations where

1 you have to decide how much longer you want to
2 make the investigation. In the past we've very
3 rarely bifurcated investigations and taken little
4 bits out of it at a time and so at some point in
5 time when allegations continued to stream in or
6 things keep arising, it is often best to say,
7 let's -- let's move forward with what we have and
8 then see if we need to go back and do more.

9 And sometimes the allegations don't --
10 don't stop, because sometimes once they start
11 happening, they steamroll. And so there are times
12 when you have to say, let's move forward with what
13 we have and wrap that up, because this
14 investigation is taking too long as it is. And so
15 when you think that you have a terminable case,
16 sometimes you say, we have a termination case,
17 let's move forward with that. And there might be
18 a lot of other miscellaneous things that get set
19 aside thinking that we don't need that at that
20 point in time to make our case and to make a
21 recommendation of termination.

22 When you have allegations of
23 untruthfulness, you often think that that person's
24 not going to be an employee very long. And so we

1 have, on any number of occasions, set aside some
2 serious allegations as, you know, pending,
3 thinking that we have enough to move forward and
4 not necessarily ever gone back, because that
5 person was separated from employment or whatever
6 else.

7 Sometimes the chain of command is aware
8 of those decisions, sometimes they're not.
9 Sometimes I'm aware of those decisions, sometimes
10 I'm not. So it's a complicated process,
11 especially when we have very lengthy
12 investigations. And what things we think are the
13 strongest evidence that we can make a case for are
14 decisions that are taken into consideration.

15 When we think that we have a
16 termination case, sometimes it's best to move
17 forward on the termination and get that done. And
18 so some things don't continue to make it lengthier
19 and lengthier and lengthier.

20 Q. And more could there need -- what more
21 would you need to understand whether or not
22 Sergeant Moore sending out a text saying, Karl
23 Shaw better not take this job and Sergeant Moore
24 telling IAB that he did that because Shaw accused

1 him of being a racist? What more would you need
2 to understand what was happening?

3 MR. COGLIANESE: Objection.

4 Q. His purpose?

5 A. A formal investigation.

6 Q. Okay.

7 A. You know, a -- a -- it being added as
8 an allegation.

9 Q. This had been an issue for six months
10 already, the whole issue about whether he was
11 discriminating. So why wouldn't it be appropriate
12 to include it since they're already investigating
13 whether he threatened black officers and they had
14 already learned during the course of the
15 investigation that he -- witnesses were reporting,
16 both white and black, that he was making racist
17 comments?

18 A. I don't have any knowledge --

19 MR. COGLIANESE: Objection.

20 A. -- that I was aware of making a
21 decision not to include it.

22 Q. I'm sorry, what?

23 A. I'm not aware of me making a decision
24 not to include that as an allegation.

1 Q. Well, it wasn't included, was it?

2 A. Correct. That doesn't mean that I made
3 a decision not to.

4 Q. Well, you had the authority -- the
5 routing sheets that came up to you concluded that
6 the selection process for the narcotics position
7 wasn't fair. Do you remember that?

8 MR. COGLIANESE: Objection.

9 A. I believe that I've established that I
10 was told about the selection process not being the
11 way that it should have been and that I ordered it
12 to be redone.

13 Q. Okay.

14 A. That doesn't mean that I was aware of
15 all of that information that was even in this
16 letter, let alone what we've been discussing as
17 far as the interviews and the text messages and
18 all of that. There was nothing stopping me, other
19 than I can't think of everything all the time.
20 And if it's brought to my attention and given to
21 me in the form of an investigation with an
22 allegation that I can review, then I address it.

23 Very rarely have I initiated
24 investigation of more information upon reading a

1 completed investigation.

2 Q. Okay.

3 A. Do you understand what I mean?

4 Q. I understand what you're saying. My --
5 my confusion, Chief, is: I believe, if not every
6 single detail, most of what I've gone over with
7 you today is in the investigative report. But let
8 me move on, okay?

9 Did you -- did you become -- did you
10 become aware that Karl Shaw was very upset and
11 fearful about what he was learning about Moore's
12 threats, one was the text, because Officer Evans
13 came to him and gave it to him. I don't think
14 there's any dispute about that in this case, it's
15 in the interviews. He also became aware of the
16 lightning link.

17 He also became aware of a prior
18 instance of Sergeant Moore threatening another
19 black officer by reaching down toward his gun as
20 he passed him in the hall, only within a few weeks
21 of this, okay? He brought it all up with Sergeant
22 Decker and -- because he was still debating, can I
23 take this position with Moore being there, and he
24 asked for a meeting with Lieutenant Brust to

1 discuss it. They discussed it. The conversation
2 is recorded. Are you aware of anything I just
3 described to you?

4 MR. COGLIANESE: Objection.

5 A. Well, obviously parts of it.

6 Q. Okay.

7 A. We've been talking about it most of the
8 day.

9 Q. I'm not asking about -- I'm not -- I
10 don't --

11 A. I --

12 Q. -- want to ask you whether you know
13 about it because we've talked about it today.
14 Before today, were you aware that Officer Shaw
15 talked to Decker and went over those three issues
16 I just mentioned, the lightning link, the Elias
17 incident that he'd become aware of since the last
18 conversation he had with him and the text message?

19 A. Well, I'm aware --

20 MR. COGLIANESE: Objection.

21 A. I'm aware of those things, but I don't
22 know when I became aware of them --

23 Q. Okay.

24 A. -- or his -- when he became --

1 Q. Okay.

2 A. -- aware of them.

3 Q. Well, we know that he became aware of
4 them before his second interview, because he
5 brings them up, okay?

6 A. Sure.

7 MR. COGLIANESE: Objection.

8 Q. All right. So I understand you don't
9 remember when you may have first learned of those
10 things or if you ever did before -- before you
11 made the decision on the package, is that what
12 you're telling me? You don't -- you don't --
13 that's what I'm trying to understand. Before you
14 made the decision on whether to charge Eric Moore
15 related to the discrimination complaints, the
16 hiring process, the racist commentary, the racist
17 threat, were you aware of what I just talked
18 about?

19 MR. COGLIANESE: Objection.

20 A. I was aware of the gist of the summary
21 of the investigation, so the contents of that I
22 had a level of awareness of.

23 Q. Okay. What -- I'm just, if you don't
24 remember, it's okay, you can tell me. Sitting

1 here today, do you believe at some point when you
2 read the summary and anything else you looked at,
3 you were aware, for example, that the lightning
4 link issue had come up?

5 MR. COGLIANESE: Objection.

6 A. Like I said, that didn't really reach
7 any level of consciousness until the OCRC
8 complaint.

9 Q. Okay. How about the text message that
10 Moore sent to John Evans and that later came to
11 Decker's attention?

12 A. I don't know how much attention I gave
13 to it at the time of reading the investigation.

14 Q. All right. Now I'm going to -- now I
15 want to talk a little -- a minute about Lieutenant
16 Brust's meeting with Karl Shaw.

17 A. Okay.

18 Q. During this meeting -- it's recorded,
19 your counsel has the transcript of the
20 recording -- Officer Shaw tells Lieutenant Brust
21 that he's struggling about the issue of whether to
22 take the narcotics job. He tells him, I'm running
23 out of time because of that time limit. My family
24 and other people, friends, are saying, don't do

1 it, don't do it, because he's shared with them
2 some of the information about Moore we're talking
3 about today. He asks Lieutenant Brust and he
4 tells Lieutenant Brust about the text. He tells
5 him that Moore said in a text to John Evans that
6 he's going to do something, I think -- I think he
7 -- he didn't actually mention text, but he told
8 him, I'm being told that Moore is saying he's
9 going to do something to me if I take the job.
10 We -- separately, Decker actually has the text.

11 A. Okay.

12 Q. Lieutenant Brust doesn't ask him any
13 questions about, well, what did you hear and what
14 do you mean? You know, what did you mean? And
15 how do you know that? He asks nothing about it.
16 And he indicates to him, look, I'm not going to
17 let him do something to you, but, you know, I'm
18 not there all the time. After which -- and by the
19 way, Lieutenant Brust doesn't go to Decker,
20 doesn't bring this up with Decker, he doesn't
21 report it to Cameron, doesn't report it to you.
22 And after that conversation, Karl Shaw decides he
23 better not take the position given all of these
24 circumstances and what Lieutenant Brust says.

1 Now, as chief, would you -- would you
2 expect Lieutenant Brust to do some follow up after
3 being told about this by Karl Shaw?

4 MR. COGLIANESE: Objection.

5 A. Not having listened to the exact nature
6 of the discussion, but based on what you have told
7 me, and I don't know that the timing of
8 everything, certainly I would think that if
9 Officer Shaw expressed concerns about his own
10 safety, that that information should have been
11 shared.

12 If it was about whether he was going to
13 be retaliated against in some way for taking the
14 job, then I would express that that would be
15 something that Lieutenant Brust should have
16 shared, at least with Commander Cameron, to make
17 sure that they were watching for adverse, you
18 know, evaluations or adverse assignments, or, you
19 know, some type of other action, employment action
20 that the sergeant could or would take against
21 Officer Shaw for taking that.

22 If it was related to the investigation
23 and he provided new information that the
24 lieutenant felt was relevant to the ongoing

1 investigation of Sergeant Moore, then, yes, he
2 should have contacted internal affairs. So there
3 are a number of things that I think could have
4 been done differently if all he said was, I can't
5 help you.

6 Q. Well, when he said, I'm not there all
7 the time, what kind -- what message do you think
8 he's sending to Karl Shaw when he's asking for --

9 MR. COGLIANESE: Objection.

10 A. You would have to ask him directly.

11 Q. I'm asking how you would take that
12 response --

13 MR. COGLIANESE: Objection.

14 Q. -- as his chief?

15 A. I understand that you said that
16 Lieutenant Brust said, I'll do what I can when I
17 am able to, but acknowledging that he's not able
18 to, you know, guard his house or guard his person
19 when he's off duty or something along that line.

20 So it does not sound very reassuring to
21 me, but it sounds realistic in the sense that,
22 hey, I'm not going to be around all the time, you
23 know, that's -- that's true of everyone. So --

24 Q. Well --

1 A. -- that certainly could be taken in a
2 number of different ways, but I don't know what
3 way Lieutenant Brust took it or intended.

4 Q. Well, one of -- but he could have said
5 that I'm going to look into this and if necessary,
6 we will consider ordering that Sergeant Moore be
7 relieved of his duty, as has been done for other
8 people and as was already done for Officer
9 Sorrell, right?

10 MR. COGLIANESE: Objection.

11 A. He could have said a hundred different
12 things.

13 Q. Okay. Yeah, well, that was certainly
14 one of them, right?

15 MR. COGLIANESE: Well, objection. I
16 mean, can we move on?

17 A. What's the question?

18 Q. That's one of the things he could have
19 said to Karl Shaw?

20 A. If he felt that there was a --
21 something that was said that needed to be relieved
22 of duty, then I would expect him to say, I would
23 relieve him of duty. But, I mean, he could have
24 said a whole bunch of different things.

1 Q. Right. But he didn't?

2 MR. COGLIANESE: Objection.

3 A. I don't know. I haven't seen or read
4 that transcript --

5 Q. Okay.

6 A. -- so I --

7 Q. I encourage you to read it. I believe
8 I've accurately described it to you.

9 A. Okay.

10 Q. Assuming --

11 MR. COGLIANESE. Form.

12 Q. -- I've accurately described it, he did
13 nothing to reassure Karl Shaw when he -- by adding
14 to his statement, I'm not around all the time, and
15 leaving it at that?

16 MR. COGLIANESE: Objection. Asked and
17 answered. Can we please --

18 MR. GITTES: That's not an objection
19 and this is cross-examination.

20 MR. COGLIANESE: This is the fifth time
21 you've asked this question, move on.

22 MR. GITTES: Rich, if you want to
23 instruct her not to answer this question, you
24 feel -- you do so.

1 MR. COGLIANESE: I have told --

2 MR. GITTES: And we can act
3 accordingly. I believe I'm conducting this
4 deposition appropriately.

5 MR. COGLIANESE: And I doubt it very
6 much.

7 MR. GITTES: You've made your
8 objection.

9 MR. COGLIANESE: Let's take a break.

10 MR. GITTES: I'm not ready to take a
11 break.

12 MR. COGLIANESE: Let's take a break.
13 We're off the record.

14 MR. GITTES: Do you need a break?

15 THE WITNESS: I'm ready.

16 MR. GITTES: Okay.

17 THE VIDEOGRAPHER: We're off the
18 record. The time is 3:02.

19 (A recess is taken.)

20 THE VIDEOGRAPHER: This marks the
21 beginning of media number four. We're back on the
22 record. The time is 3:15.

23 Q. Ready?

24 A. Yep.

1 Q. Okay. I wasn't quite finished asking
2 you about the meeting between Lieutenant Brust and
3 Karl Shaw. One of the other aspects of their
4 conversation is that Officer Shaw, who I think we
5 discussed earlier, had complained about the manner
6 of that interview by Cameron where Brust was
7 there, too?

8 A. Yes.

9 Q. Did you know or have you learned that
10 during this recorded conversation with Officer
11 Shaw, Lieutenant Brust told Shaw that Cameron was
12 a bully in reference to that interview?

13 MR. COGLIANESE: Objection.

14 A. That doesn't sound familiar to me.

15 Q. Okay. Would you agree that if
16 Lieutenant Brust felt Cameron was bullying Shaw or
17 trying to bully him not to take the job, and in
18 combination with being told that Moore had been
19 issuing warnings against taking the job, that
20 Lieutenant Brust should have followed up on it
21 either with the commander or IAB?

22 MR. COGLIANESE: Objection.

23 A. I'm not sure I'm clear on the actual
24 question. Are you saying, Lieutenant Brust should

1 have followed up with IAB if he alleged Commander
2 Cameron is a bully or what?

3 Q. If he felt that Commander Cameron was
4 bullying Karl Shaw with respect to that interview
5 that was conducted, and it was in the context of
6 whether he should take that position, and in light
7 of Shaw's being upset about the interview,
8 shouldn't he have reported it, or at least talked
9 to Cameron about it?

10 A. I think he --

11 MR. COGLIANESE: Objection.

12 A. -- could have talked to Officer Shaw
13 about what he wanted to see happen. You know, if
14 he wanted to make an allegation against Commander
15 Cameron or Lieutenant Brust and explain the
16 process if he was unaware. If he felt that there
17 was enough information there that needed to be
18 investigated, he certainly could have made a
19 decision to either go to internal affairs or go to
20 Commander Cameron's deputy chief to, you know,
21 share his concerns.

22 Q. Now, let's take a look -- let's do
23 those two exhibits here right now.

24 MR. VARDARO: 38, it's too big to

1 staple, so we need to be careful to keep that
2 together as best we can.

3 - - - - -

4 Thereupon, Plaintiff's Exhibit 38 is
5 marked for purposes of identification.

6 - - - - -

7 Q. First, for the record, you've been
8 handed what's been marked as Plaintiff's Exhibit
9 38. And I would ask you if you can flip through
10 that and see if that is the investigative summary
11 regarding Eric Moore's investigation?

12 A. It certainly appears to be.

13 Q. Okay. And did you read some or all of
14 this investigative report?

15 A. I believe so.

16 Q. And then if you would go to page 147 of
17 the report. It's up here in the left-hand corner,
18 the page numbers. You can take the clip off as
19 long as you're careful. I think it is actually
20 easier, at least it was for me. There's also page
21 numbers at the bottom and the Bates stamp number
22 is --

23 A. I got it.

24 Q. You got it? Okay.

1 So I will represent to you, as it
2 should be obvious when you flip through, this is
3 the portion of the investigation, a much smaller
4 portion, regarding allegations involving Moore's
5 alleged racism and other misconduct of that
6 nature.

7 Did you read all or a portion of this
8 section of the investigation?

9 A. I believe so.

10 - - - - -

11 Thereupon, Plaintiff's Exhibit 35 is
12 marked for purposes of identification.

13 - - - - -

14 Q. Okay. Then I would also like to hand
15 you what's been identified as Exhibit 35. And I
16 will represent to you that this is the actual
17 interview summary of the interview of Sergeant
18 Moore by Sergeant Decker. And I would like to
19 know whether you read that interview?

20 A. Without reading it again, I would have
21 to guess. I don't -- I don't -- I don't know for
22 sure, but --

23 Q. Well, would -- take your time and look
24 at it. I need to know whether you read it.

1 A. I would have to say that some of this
2 content looks familiar to me, but whether I read
3 it word for word, I can't tell you.

4 Q. Chief, let me ask you: Would it --
5 would there be some reason when you are in a case
6 involving charges that you wouldn't read the
7 officer's interviews who was being charged?

8 A. No, I would say it was very typical of
9 me to do that.

10 Q. Okay. Now, I would like to ask a -- or
11 share with you some information to see if you knew
12 about it at any time before today.

13 A. Okay.

14 Q. There -- did you -- were you made aware
15 at any time that Officer Dick Elias had made a
16 complaint to Lieutenant Brust about Officer Moore
17 passing him in the hall and putting his hand on
18 his weapon as if to draw it out and Officer Elias
19 complaining about it to Lieutenant Brust?

20 MR. COGLIANESE: Objection.

21 A. I'm aware of -- of some incident
22 involving Officer Elias and Sergeant Moore
23 occurring.

24 Q. Okay. And were you aware that Sergeant

1 Moore acknowledged to Brust, according to Brust,
2 that he had done it and it was poor judgment?

3 MR. COGLIANESE: Objection.

4 A. I might be.

5 Q. Okay. Given what lieutenant -- what
6 Karl Shaw was telling Brust in that meeting I --
7 we discussed earlier before the break?

8 A. (Indicates affirmatively.)

9 Q. Do you think it was appropriate -- and
10 I'll represent to you this is what Lieutenant
11 Brust told us -- that he did not follow up
12 regarding the Elias situation or make Sergeant
13 Decker aware of it after Karl Shaw shared with him
14 his concerns about threats being made by Moore?

15 MR. COGLIANESE: Objection.

16 A. I don't know what reasoning Lieutenant
17 Brust would have had for the decision-making that
18 he used. I don't know what he knew about Officer
19 Elias's situation involving that. So it's hard
20 for me to say what rationale Lieutenant Brust used
21 for his decision-making and whether or not that
22 was appropriate.

23 Q. Okay. Well, I guess I'm asking you as
24 a supervisor, as an experienced command officer,

1 if you have a black officer come to you and report
2 that a white officer made a gesture of grabbing,
3 reaching for a gun and -- as if to pull it out as
4 passing you in the hall, and that officer was
5 upset enough that they came to you and said this
6 happened and reported it, and you checked with the
7 person involved, the white officer involved who
8 confirmed it but said and acknowledged it was poor
9 judgment. And then later, a couple of weeks later
10 you find out that at least allegedly that that
11 same person, and it's a ranking officer, a
12 sergeant, is now being accused of and involved
13 with other racist discriminatory remarks and
14 threats. Wouldn't what happened with Officer
15 Elias at least be appropriate for the investigator
16 to know about?

17 MR. COGLIANESE: Objection.

18 A. I certainly think that it could have
19 been shared and appropriately been shared.

20 Q. Now -- I'm now moving on to another
21 completely different event.

22 Are you familiar with an Officer
23 Christopher Smith-Hughes?

24 A. I am. Sergeant.

1 Q. Sergeant. No, I'm going to put this
2 off to save time, because it doesn't -- I'm
3 worried about time, so I'm just going to drop that
4 for the moment.

5 The narcotics bureau -- part of your
6 job as chief, as you mentioned earlier, you keep
7 track of overtime, or that's an important
8 financial issue?

9 A. Well, I -- I ask many other people
10 within the division of police --

11 Q. Right.

12 A. -- to help me stay within the overtime
13 budget. It's their job to keep track of it.

14 Q. Right. I didn't mean that you had to
15 do the accounting.

16 Based on your own experience as chief
17 and just general awareness as a commanding
18 officer, the narcotics bureau is among the
19 highest, if not the highest unit with need for
20 officers to work overtime; is that not true?

21 A. It's one of them.

22 Q. When -- there obviously was a
23 progression during the course of this
24 investigation which occurred over a year --

1 ongoing over a year. In hindsight, I'm asking you
2 in hindsight, would you agree that there were
3 several points in time when a decision to relieve
4 Sergeant Moore of his duties would have been
5 appropriate?

6 MR. COGLIANESE: Objection.

7 A. A decision to relieve him of duty was
8 enacted.

9 Q. Yeah, but it was like almost a year
10 after the investigation, wasn't it?

11 A. So what's the question?

12 Q. Well, I'm asking you, you have a
13 sergeant who is involved in ongoing work at a unit
14 where individuals who have reported he engaged in
15 black -- black individuals who have reported he
16 has made racist statements, sent a threatening
17 text message, corroborated, to some extent, by
18 other officers and not just one or two, but more
19 than that, and these officers are interested in
20 the narcotics bureau, given all of those
21 circumstances -- and he's admitted it, the
22 sergeant has admitted to the text message. Why
23 would he remain on duty?

24 MR. COGLIANESE: Objection.

1 A. Somebody would need to advise the chain
2 of command or me that they have information that
3 leads us to believe that there's a charge perhaps
4 that could reach termination level, that is likely
5 to be sustained or of the nature that we can't
6 trust that individual to perform their duties
7 without the potential of causing harm or, you
8 know, making a decision that could impact either
9 employees or the public.

10 So depending on the information that we
11 know during the investigation, or think that we
12 can prove and is -- is then discussed to the point
13 where there's a conversation about relief of duty,
14 is usually the factors that determine that. Going
15 into an investigation, allegations that come in,
16 sometimes they sound egregious, like I mentioned
17 before, you know, people have accused officers of
18 rape, but based on the information that we have,
19 we're like, there's no evidence to indicate such
20 and we wouldn't relieve them.

21 But in another case, based on the
22 evidence that we have initially, we might very
23 well relieve them of duty. So it all depends on
24 the amount of evidence that we have, whether the

1 case might result in sustained departmental
2 charges for a terminational -- terminational, you
3 know, type of a recommendation. Or whether or not
4 we feel that we can trust that person to do their
5 job in the way that we expect it to be done.

6 Q. Well, let's see if we can put timing on
7 it. By the time of Sergeant Moore's interview, at
8 least the April 14th interview of 2015, he
9 admitted sending the text message, and the reason
10 he sent it, shouldn't he have been relieved at
11 that point?

12 A. That -- I would -- I would say that --
13 I can't say that "should have" is necessarily part
14 of the equation. I don't think that we've ever
15 fired anybody for such a text message before. The
16 retaliation issue is probably the strongest,
17 because despite what the words are, "get them,"
18 it's still unclear if he meant I'll get them
19 through my evaluation of them --

20 Q. No, I don't want to be misled. And I'm
21 sorry to interrupt you. I think I used "get
22 them," but the other phrase I used, which is
23 actually the actual words, is "better not."
24 Better not take the job, okay?

1 A. So the part that you said earlier that
2 says, "or I'll get them" is not there?

3 Q. That's not the words that were in the
4 text.

5 A. Oh, well, then do we go back and relive
6 my former testimony based on my understanding of
7 what that was?

8 MR. COGLIANESE: Yeah, and by all
9 means -- go ahead. "Get them" was not in the
10 text.

11 A. Well, then what I've responded to
12 earlier needs to be taken into consideration that
13 I was misled as to what that text message said.

14 Q. Okay. Well, let's go over the text
15 message.

16 A. Okay.

17 Q. He's sending an e-mail saying that
18 Lancaster and Shaw better not take the job.

19 A. Period?

20 Q. Yeah. Well, there's -- but that's the
21 essence of the -- of the message. You do not
22 consider that a threat?

23 MR. COGLIANESE: Objection.

24 A. I've already testified that I didn't

1 consider that to be a direct threat of violence.

2 Q. Okay. I didn't ask if you if it was a
3 threat of violence.

4 A. I just responded to you. I didn't
5 consider it to be a threat of violence.

6 Q. Okay. Do you consider it to be a
7 job-related threat?

8 MR. COGLIANESE: Objection.

9 A. It certainly could be taken that way.
10 I don't know what his intentions were, so that's,
11 again, something that you have to find out what he
12 means by that particular thing.

13 Q. Would sending a message like that
14 reasonably be viewed as deterring or trying to
15 deter -- deter someone from taking a job when the
16 person who sent it admits he did it because they
17 called him a racist?

18 MR. COGLIANESE: Objection.

19 A. I believe that that certainly could be
20 taken as a deterrent.

21 Q. Okay. And would you not agree it would
22 be an attempt to prevent them from taking it
23 because of their assertion about him?

24 MR. COGLIANESE: Objection.

1 A. Well, I think that the testimony has
2 already indicated that he wanted to get to
3 somebody else, so certainly preventing somebody
4 from taking it would have been part of getting to
5 somebody else.

6 Q. Chief, in his interview, he didn't say
7 he sent it because he wanted to get to Ehrenborg.
8 He said he sent it because they called him a
9 racist. Why would he say it if his only reason
10 was to get to Ehrenborg?

11 MR. COGLIANESE: Objection.

12 A. I didn't say that that was his only
13 reason.

14 Q. Maybe I'm misunderstanding you, and
15 tell me if I'm misreading you. You seem to be
16 trying to come up with explanations for Sergeant
17 Moore's conduct here, and I'm a little confused
18 why you're doing that.

19 MR. COGLIANESE: Objection.

20 A. I am not. I'm trying not to guess at
21 anybody's intentions. You've asked me in a number
22 of times to put myself in other people's shoes or
23 to explain why somebody did or did not do
24 something. So I'm not trying to explain why

1 Sergeant Moore did something. I am trying to
2 explain, when I can, what I think of a particular
3 thing. You asked me why he wasn't relieved about
4 a text message that I now find out isn't exactly
5 what you had said was -- it was earlier.

6 So in clarifying why he wasn't relieved
7 after finding out about a particular message that
8 was sent, I think that's how we got back into this
9 discussion, but I'm not trying to read anyone's
10 mind.

11 We've discussed the fact that Sergeant
12 Moore wanted to get to sergeant -- or Officer
13 Ehrenborg. So the means in which he accomplished
14 that is -- sounds like a variety of things,
15 preventing people, deterring people, talking to
16 people, passing people, you know, not waiting for
17 an answer, whatever it might have been, all seem
18 to have been at play.

19 Q. Okay. So in your analysis when
20 Sergeant Moore told Sergeant Decker that he sent
21 the e-mail warning them they better not take the
22 job, and that he did it because they called him a
23 racist, you can't tell why he did it?

24 MR. COGLIANESE: Objection.

1 A. I didn't say that.

2 Q. Okay. Well, fine.

3 So you -- you -- do you think it's
4 reasonable for Sergeant Decker and others who read
5 that portion of the interview to take Sergeant
6 Moore at his word when he says he did it because
7 they called him a racist?

8 MR. COGLIANESE: Objection.

9 A. If somebody explains their
10 justification for that, then generally we're going
11 to believe that that is their justification.

12 Q. And in terms of considering what the
13 officers who were cautioned not to take the job,
14 isn't it part of your responsibility as a chief or
15 as a command officer who is to enforce the
16 retaliation prohibitions to consider whether that
17 text under those circumstances would deter people
18 from making complaints, raising issues of racism?
19 Isn't that part of what you have to do to evaluate
20 a retaliation claim?

21 MR. COGLIANESE: Objection.

22 A. You're asking if I as the chief need to
23 decide if that message was going to deter people
24 from taking the job?

1 Q. Could deter people?

2 MR. COGLIANESE: Objection.

3 A. I think I established that I felt
4 strongly enough about the methods used that I
5 asked and ordered it to be reposted. So I think
6 it's definitely shown that I did not approve of
7 the way that that posting was handled.

8 And as far as retaliatory behavior,
9 certainly that is something that concerns me, and
10 its impact upon our personnel is another concern.
11 So I'm not sure what parts of that question I
12 didn't respond to.

13 Q. Okay. I'm just trying to find out
14 whether you, considering all the facts that you're
15 aware of, concluded that Sergeant Moore's text
16 message, along with his other behavior, would
17 deter a reasonable person from raising
18 discrimination complaints?

19 MR. COGLIANESE: Objection.

20 Q. If that was -- that's a risk of his
21 behavior?

22 MR. COGLIANESE: Objection.

23 A. I can't speak for what other people use
24 as their rationale, but certainly retaliation is

1 something that could deter people from reporting
2 something and/or taking an assignment.

3 Q. I want to switch gears here for a few
4 minutes. And I would like you to take a look
5 at --

6 MR. VARDARO: 58.

7 MR. GITTES: Yeah, was it 58? I had it
8 marked.

9 MR. COGLIANESE: Chief, just make sure
10 you put the clip on that.

11 THE WITNESS: Yeah, I am.

12 MR. COGLIANESE: Thanks.

13 - - - - -

14 Thereupon, Plaintiff's Exhibit 58 is
15 marked for purposes of identification.

16 - - - - -

17 Q. What I've -- what you've been handed,
18 Chief, is a print of a newspaper article in which
19 you're quoted, Plaintiff's Exhibit 58. And I
20 would like you to take a moment and read the
21 article, because I just want to confirm whether
22 you made the statements attributed to you in the
23 article.

24 A. Okay.

1 Q. Okay. Were there any statements
2 attributed to you in this article that you believe
3 are inaccurate or that you didn't say?

4 MR. COGLIANESE: Objection.

5 A. I can't say that word for word the
6 quotes are exactly what I said, but I don't
7 dispute that I might have said words to these
8 effect.

9 Q. Okay. Okay. Now, I would like to give
10 you -- I want 54 and 55.

11 MR. VARDARO: Here's 54.

12 Q. I'm going to give you two exhibits,
13 Chief.

14 A. Okay.

15 - - - - -

16 Thereupon, Plaintiff's Exhibits 54 and 55
17 are marked for purposes of identification.

18 - - - - -

19 Q. For the record, Chief, you've been
20 handed what have been marked as Plaintiff's
21 Exhibit 54 and 55. And first of all, do you
22 recognize these documents?

23 A. I don't know that I've seen the routing
24 sheet before, which is 54.

1 Q. Okay. And what about 55?

2 A. Are you asking if I've seen it before?

3 Q. Yes, if you recognize it?

4 A. Yes.

5 Q. Okay. And what is it?

6 A. This is a summary of an investigation
7 that was conducted by internal affairs. It's not
8 everything that was investigated, but it's part of
9 an investigation that was conducted by internal
10 affairs of Lieutenant Melissa McFadden.

11 Q. Okay. And the investigative report is
12 dated February 9th, 2018, correct?

13 A. Yes.

14 Q. Didn't you order Lieutenant McFadden
15 relieved of duty in March of '17? Actually,
16 March 10th of 2017?

17 A. I don't believe that that is what
18 happened. I see that the routing sheet says to be
19 relieved of her assignment, but she was
20 reassigned. But I don't believe she was relieved
21 of duty at that time.

22 Q. Okay. So, I mean, this is -- first of
23 all, did you talk to Deputy Chief -- do you
24 pronounce his name Kuebler, is that --

1 A. Kuebler.

2 Q. Like the cookies?

3 A. Yeah.

4 Q. Okay.

5 A. But it's spelled differently.

6 Q. Did you discuss McFadden with him?

7 MR. COGLIANESE: Objection.

8 A. I am sure that I have.

9 Q. Okay. As best you recall, what -- what
10 did you order about her?

11 MR. COGLIANESE: Objection.

12 A. I don't know if I ordered, approved or
13 what, but based on the information that we
14 received, an investigation was to ensue and she
15 was to be reassigned during the pendency of that
16 investigation, because she was the accused in an
17 EEO allegation. And per the recommendations of
18 federal EEO law, you remove the accused rather
19 than the accuser if they are going to remain in
20 contact.

21 And so that was the decision or part of
22 the decision-making with regard to not letting her
23 continue to act as the lieutenant in the patrol
24 zone that she was.

1 Q. Because -- so you -- as I recall, you
2 reassigned her -- when I say you --

3 A. She was.

4 Q. -- with your consent, she was
5 reassigned to a non-supervisory position -- no?

6 A. I wouldn't say that at all.

7 Q. Okay. Where was she reassigned?

8 A. No authority was taken away from her
9 with regard to her supervisory rank. She was
10 assigned to a place that didn't have the same
11 direct reports or responsibilities, but I didn't
12 take away any of her supervisory authority.

13 Q. She was assigned to the property room,
14 right?

15 A. Yes.

16 Q. Who -- who was there that she was
17 supervising?

18 A. I don't believe that she was put in
19 charge of anybody to supervise.

20 Q. Okay.

21 A. They already have a chain of command
22 there.

23 Q. Had she admitted to -- had she --
24 according to the charges against her, had she made

1 any threats of violence to anybody?

2 A. Not that I'm aware of.

3 Q. Had she sent any -- verbally or in
4 writing, communicated any messages warning someone
5 not to seek a position under her authority related
6 to a complaint about her?

7 A. I don't believe that we had that type
8 of information.

9 Q. Okay. You, as I recall, according to
10 the records, you ordered her put into the property
11 room one day after, is it Commander Grizzell, I
12 believe, sent you a letter about her concerns
13 about Lieutenant McFadden; isn't that correct?

14 MR. COGLIANESE: Objection.

15 A. I don't recall the exact timing.

16 Q. Okay. You wouldn't dispute that she
17 sent the letter to you on the 9th and you
18 confirmed that she should be put into the --
19 reassigned to the property room, that is McFadden,
20 on the 10th?

21 MR. COGLIANESE: Objection.

22 A. What you characterize is after I had
23 discussed concerns I believe. I don't know that
24 there weren't discussions prior to the actual

1 letter being sent up, so --

2 Q. Okay.

3 A. -- I --

4 Q. Well, can we agree that one day after
5 the letter was sent up, regardless of whether
6 there were prior discussions, you moved McFadden,
7 reassigned her to the property room?

8 MR. COGLIANESE: Objection.

9 A. Well, that information's not before me.
10 This is dated -- discussed with me on the 10th of
11 March. It's forwarded on the 13th of March.

12 Q. Okay.

13 A. And I don't know -- well -- it says it
14 was originated on the 9th, so -- but there's no
15 letter here, so I --

16 Q. Okay. Do you need me to show you the
17 letter? Do you dispute that it happened very
18 quickly?

19 MR. COGLIANESE: Objection.

20 A. No.

21 Q. Okay. So with respect to McFadden, she
22 hadn't admitted anything, which is something you
23 stress with Sorrell earlier today, she was charged
24 with EEO violations, as was Sergeant Moore, but at

1 no time did you or anybody under your command seek
2 to relieve Sergeant Moore, though it became clear
3 early on that he was going to be involved as an
4 officer in a bureau where black officers who had
5 expressed complaints, along with others, about his
6 discriminatory racist conduct. Why wasn't he
7 relieved?

8 MR. COGLIANESE: Objection.

9 A. You're equating, I think, what happened
10 to Lieutenant McFadden with what didn't happen to
11 Sergeant Moore.

12 Q. Absolutely. That's exactly what I'm
13 doing.

14 A. And they are not the same.

15 Q. Tell me how they're not the same.

16 A. Lieutenant McFadden was given a new
17 place to report to work because she still had
18 people within her chain of command that were, I
19 believe, accusers of hers, and we wanted to make
20 sure that separation happened. She wasn't
21 relieved of duty. Her gun wasn't taken away. Her
22 badge wasn't taken away. She still had police
23 powers. Relieving somebody of duty is taking away
24 their badge and gun and saying, don't perform

1 police powers.

2 In Sergeant Moore's case, he, at some
3 point in time, had already received a new
4 assignment, wasn't working with the people that
5 had accused him of the racist remarks, to my
6 knowledge.

7 Q. So the fact that he actually ordered,
8 using his powers as sergeant, Whitney Lancaster to
9 come and talk to him when he was prohibited to do
10 so, and Officer Lancaster later was interviewed
11 and said he felt it was discriminatory the way
12 both the commander and -- and Moore talked to him
13 and pushed him out of the job, that didn't matter?

14 MR. COGLIANESE: Objection.

15 A. I didn't say that at all. I'm just
16 saying, you asked why he wasn't relieved of duty.

17 Q. Okay. Why wasn't he relieved of duty
18 at the point in time he disobeyed the order not to
19 talk to people who were witnesses in an ongoing
20 discrimination investigation?

21 MR. COGLIANESE: Objection.

22 A. I don't know that anybody made that
23 recommendation.

24 Q. Why didn't you make that

1 recommendation?

2 A. I don't know how much information I had
3 at that time to be able to make that decision.

4 Q. Okay. Why didn't -- you understood at
5 a certain point, didn't you, that he had ordered
6 an illegal weapon?

7 MR. COGLIANESE: Objection.

8 Q. Moore, I'm talking about Eric Moore.

9 MR. COGLIANESE: Yeah, objection.

10 A. As I stated before, I have no idea when
11 I first became aware of that. The fact that the
12 ATF, who would be the investigating agency on
13 that, declined to prosecute is an indication that
14 there's not enough evidence or it's not
15 prosecutable. If it's not prosecutable, it is
16 probably not going to result in a termination
17 case. And that is one of the leading reasons why
18 you would relieve somebody of duty upon learning
19 of -- of criminal behavior.

20 Q. Chief, is it your representation here
21 that the FBI, ATF, even the Columbus -- I'm sorry,
22 the Columbus and county prosecutors don't decide
23 not to prosecute for reasons other than the merits
24 of a case?

1 MR. COGLIANESE: Objection.

2 A. I didn't say anything like that.

3 Q. Sometimes they do it because it's not a
4 priority case, right?

5 MR. COGLIANESE: Objection.

6 A. They have a variety of reasons for not
7 charging people.

8 Q. I mean, no law enforcement agency that
9 you know of prosecutes every single criminal case
10 of any kind; isn't that true?

11 A. I have no knowledge --

12 MR. COGLIANESE: Objection.

13 A. -- of everybody -- of what you said,
14 yeah.

15 Q. Okay. I mean, there's limits on
16 resources, among other things?

17 MR. COGLIANESE: Objection.

18 A. Correct.

19 Q. Okay. I mean, you recently in this
20 depo were talking about resource problems because
21 at one point you were running short of people and
22 you used SRB -- a reorganization that may have
23 been perfectly necessary, but it happened to help
24 out because you needed people at another -- other

1 assignments.

2 MR. COGLIANESE: Objection.

3 A. If that was a question, yes.

4 Q. Yeah, it was a question.

5 A. Okay.

6 Q. Sorry.

7 I mean, it's -- I mean, it's a problem
8 for all law enforcement, I think everybody here in
9 this room understands that.

10 A. Resources are.

11 Q. Okay. But that's not a reason to think
12 that the fact that they have -- they've indicated
13 to Sergeant Decker, not just to Karl Shaw, that
14 they had proof he ordered a lightning link,
15 doesn't mean it's pertinent to the Columbus Police
16 Department, does it?

17 MR. COGLIANESE: Objection.

18 A. I'm not understanding what the question
19 is.

20 Q. Because the ATF didn't prosecute
21 doesn't mean they didn't have evidence to verify
22 that the sergeant ordered an illegal device?

23 A. Correct.

24 MR. COGLIANESE: Objection.

1 Q. But Sergeant -- Sergeant Decker was
2 told not to pursue that, wasn't he?

3 A. I believe you testified to that.

4 Q. No, I'm asking you. Wasn't he?

5 MR. COGLIANESE: Objection.

6 A. I -- Sergeant Moore was not --

7 Q. Sergeant Decker -- oh, I'm sorry, maybe
8 you meant Sergeant Moore.

9 A. Sergeant Moore was not investigated by
10 internal affairs for that attempt to purchase.

11 Q. And didn't Sergeant Decker, in his
12 report, say that he wasn't investigating him about
13 the lightning link because ATF didn't prosecute
14 him?

15 MR. COGLIANESE: Objection.

16 A. You're asking me to recall details
17 about the investigation that I would have to read,
18 but I believe that you earlier testified that --
19 or stated that Commander Moore gave him that
20 direction.

21 Q. Okay. I haven't testified and I'm not
22 under oath.

23 A. You've stated.

24 Q. I've stated it's in the report. And we

1 have it here if you want -- you and your counsel
2 can correct me when I'm wrong, and I've already
3 corrected myself on one occasion when I made
4 one --

5 A. Correct.

6 Q. -- misstatement.

7 A. Correct.

8 MR. COGLIANESE: There's been more than
9 one, but that's fine.

10 MR. GITTES: Okay. You can put them
11 all on the record.

12 MR. COGLIANESE: I've been objecting to
13 lots of them.

14 MR. GITTES: Okay.

15 Q. You -- my question was: Do you recall
16 that in his report, he indicated that he -- he,
17 Decker, didn't pursue it because ATF hadn't
18 charged him or pursued the case?

19 A. I believe that I read that in the
20 summary of the report.

21 Q. Okay. And my understanding that by
22 itself is not a reason to look into a situation
23 like that. The mere fact that another law
24 enforcement agency hasn't prosecuted a Columbus

1 police officer isn't -- it's not a policy of the
2 department that that means it's not to be
3 investigated?

4 MR. COGLIANESE: Objection.

5 A. I've already testified to that.

6 Q. So it's not a policy?

7 MR. COGLIANESE: Asked and answered.

8 A. We don't have a policy.

9 Q. Okay. Did you -- did you or did
10 yourself ask Sergeant Decker why he didn't look
11 into it further?

12 MR. COGLIANESE: Objection. Can you
13 read that question back? I just want to make sure
14 I heard it.

15 (The record is read as requested.)

16 MR. COGLIANESE: Objection. Go ahead.

17 Q. Let me clarify the question in case --
18 since Rich doesn't understand it.

19 Did you ask Sergeant Decker why he
20 didn't investigate it further?

21 A. I don't recall.

22 Q. Okay. Did you instruct anybody else to
23 talk to Sergeant Decker about investigating the
24 lightning link?

1 A. Not that I recall.

2 Q. Okay. At the time that you became
3 aware that there were multiple witnesses
4 confirming racist statements or slurs by Sergeant
5 Moore, why wasn't he relieved at that point?

6 MR. COGLIANESE: Objection.

7 Q. Or -- or reassigned to a position where
8 you would have no -- he would not be with people
9 who might be seeking or working with him?

10 MR. COGLIANESE: Objection.

11 A. Well, again, I don't recall anybody
12 making that suggestion based on the information
13 that we had at that point in time, making racist,
14 derogatory comments. We -- we don't have a
15 precedent for termination for such comments within
16 the division of police, so it wouldn't jump out as
17 this is a termination case, we have to relieve him
18 of duty that it would necessarily be brought to my
19 attention for consideration. And that doesn't
20 stop anybody else from making that decision.

21 And I don't know if Sergeant Decker
22 brought it to somebody's attention, recommended
23 that he be relieved of duty, if that was
24 discussed. I don't know how many times we

1 discussed when would be an appropriate time to
2 relieve him of duty. It certainly wasn't any
3 desire to protect Sergeant Moore, and it certainly
4 wasn't any desire to upset any of our employees.
5 It's just a decision that isn't taken lightly.

6 I have been accused by the FOP and
7 talked to by the FOP and pleaded to by the FOP to
8 be very careful about our relief of duty
9 situations. And I made changes to the policy and
10 then discussed with our command staff when
11 relieving of duty might be appropriate and when
12 it's not and then how long that should last. And
13 I've made it clear to them, as I've tried to make
14 it clear here, that if we don't trust you to do
15 the job the way that it's supposed to be done and
16 can't trust you around other employees or
17 public -- or the public, you should be relieved
18 until we know more. And if I think I have enough
19 evidence of an allegation that would result in
20 termination, that would be another reason to
21 recommend relief of duty.

22 Q. Well, first of all, let me make it
23 clear. I'm not just asking about relief of duty
24 in light of your absolutely appropriate point that

1 the McFadden case, she was reassigned. Why didn't
2 you reassign the sergeant?

3 A. I'm not aware of a situation where he
4 was directly supervising the accusers.

5 Q. You were aware that individuals were --
6 wanted to work in the bureau in which he would be
7 supervising him and were being deterred because of
8 comments witnesses were saying he made and
9 statements he texted; isn't that correct?

10 MR. COGLIANESE: Objection.

11 A. It's a lot easier for me to leave him
12 in an assignment where he's not directly
13 supervising those accused than to move him
14 someplace where he might come into contact with
15 people that are the accusers. So if there's
16 multiple accusers, that would be -- make it even
17 more difficult for me to find a place to reassign
18 him.

19 And like I said, I'm just not aware of
20 a situation where he was supervising those people
21 that had accused him of discriminatory behavior.

22 Q. So did you actually make a decision
23 that it was better that someone like Officer Shaw
24 be prevented from seeking to work in narcotics

1 than it would be to have Sergeant Moore reassigned
2 somewhere?

3 MR. COGLIANESE: Objection.

4 A. Not at all.

5 Q. Did you actually even consider
6 reassigning him?

7 MR. COGLIANESE: Objection.

8 A. I would say that at various points in
9 time, there was discussion of either relieving him
10 of duty or -- or reassigning him. And I can't
11 tell you when those discussions occurred, whether
12 they were repeated or whether they were only at
13 the beginning or what, but I know that there was
14 certainly thought about whether or not he should
15 be relieved of duty. I just can't tell you how
16 often that was discussed or who it was discussed
17 with or where it stood with regard to the evidence
18 that we had.

19 Q. Were those -- did those discussions
20 occur with Commander Cameron?

21 A. I generally wouldn't be doing that kind
22 of conversation with the commanders.

23 Q. So it would have been -- would have
24 been with Quinlan and/or Gray?

1 A. And/or all of the executive staff, yes.

2 Q. Okay.

3 A. And it might have been internal affairs
4 as well.

5 Q. And when you use the phrase "executive
6 staff," who are you including?

7 A. The six deputy chiefs and the commander
8 from the professional standards bureau are the
9 members of the executive staff. And the chief.

10 Q. Are those -- have the deputy chiefs --
11 how many of those deputy chiefs are still in the
12 department to the best of your knowledge, of the
13 ones that would have been involved in the
14 discussions about Moore?

15 A. Well, Gray --

16 MR. COGLIANESE: Objection.

17 A. -- has retired and Gary Dunlap has
18 retired just in the last month.

19 Q. Okay. And who are the other four?

20 A. Currently there's Tom Quinlan who's --

21 Q. Right.

22 A. -- acting -- acting chief. Richard
23 Bash, Tim Becker, Ken Kuebler and Michael Woods.

24 Q. Okay.

1 A. And then like I said, Gary Dunlap just
2 retired, so they're in the process of selecting
3 somebody for his position. And Knight is the
4 acting deputy chief for Quinlan's position.

5 Q. So if I understand it, when you
6 fired -- or recommended the termination of Melissa
7 McFadden, that's the first time, to your
8 knowledge, anyone has been fired for making racist
9 comments?

10 MR. COGLIANESE: Objection.

11 Q. Alleged racist comments?

12 MR. COGLIANESE: Objection.

13 A. Well, Melissa McFadden wasn't fired.

14 Q. Recommended termination. I'm sorry,
15 you demote -- you recommended demotion, you're
16 right, I'm sorry.

17 MR. COGLIANESE: Objection.

18 A. So what's -- what's the question?

19 Q. Okay. Did you recommend termination
20 for her?

21 A. I did.

22 Q. Okay.

23 A. But not for that.

24 Q. What did you recommend termination for?

1 A. Untruthfulness.

2 Q. Okay. And what was --

3 A. And -- and possibly discriminatory
4 actions.

5 Q. Okay.

6 A. I would have to review the charges
7 again.

8 Q. Do you remember what she was allegedly
9 untruthful about?

10 A. Her testimony in my hearing, I felt
11 that she was untruthful to me --

12 Q. Okay.

13 A. -- and untruthful in her statements to
14 internal affairs, but --

15 MR. GITTES: Can we have a short break?
16 I think I'm almost done.

17 THE VIDEOGRAPHER: We're off the
18 record. The time is 4:18.

19 (A recess is taken.)

20 THE VIDEOGRAPHER: We are back on the
21 record. The time is 4:27.

22 Q. Okay?

23 A. Uh-huh.

24 Q. Chief, I would like you to look at

1 Exhibit -- Exhibit 57 again.

2 MR. VARDARO: No, you haven't given it
3 to her yet.

4 MR. GITTES: Oh, that's right.

5 - - - - -

6 Thereupon, Plaintiff's Exhibit 57 is
7 marked for purposes of identification.

8 - - - - -

9 Q. And after you've had a chance to look
10 at the exhibit, can you tell me what it is?

11 A. First page is my recommendation of the
12 charges to Lieutenant McFadden, and the next one
13 is my recommendation, the finding and discipline
14 to the Director of Public Safety. The one labeled
15 000006 is a routing sheet that I signed off on at
16 the conclusion of the investigation and prior to
17 the departmental charge hearing. And the one that
18 ends with 07 is Deputy Chief Bash's comments with
19 regard to the investigation, and there are also
20 e-mails here. And the last one are the charges
21 that were filed against her prior to the hearing.

22 Q. Okay. Let me make sure I understand.
23 So going from reverse direction, the last two
24 pages were the charges you had decided to file?

1 A. There's one, two, three --

2 Q. Three pages, yeah?

3 A. -- so 11, 12 and 13 are the charges
4 that I signed off on charging her departmentally
5 with violations of our rules.

6 Q. And that's dated the 18th and that's
7 your signature above your name?

8 A. Correct.

9 Q. And in this specific -- in the charges,
10 I don't see anything about lying. Am I missing
11 something?

12 A. No, you're right. I -- I was thinking
13 of something else.

14 Q. So it's all EEO-related charges?

15 A. Correct.

16 Q. And as I think you indicated, this
17 document at the end came before the hearing, the
18 charges come out --

19 A. This is her notice that she's being
20 departmentally charged with those violations,
21 correct.

22 Q. And she signs it, because I think
23 that's her signature?

24 A. This is, yes, her receipt --

1 Q. Okay.

2 A. -- to say that she understands that she
3 needs to appear.

4 Q. Okay. And then I guess now I
5 understand my confusion about termination,
6 demotion. In this letter, the first page, there
7 were different penalties assigned to different
8 specifications, is that why there's three
9 different things? It says level of discipline,
10 240 hours suspension/termination/demotion?

11 A. I -- I grouped them all together, and
12 that was my recommendation for that combination of
13 charges.

14 Q. Okay.

15 A. I did not separate out what the
16 different --

17 Q. Well, how does that work? I mean, in
18 practice, if you've done three different levels of
19 discipline, how does it -- how is that handled?
20 Obviously if you're terminated, you're not -- you
21 can't be demoted. I mean, so how does it work?

22 A. How does that work if that was to be
23 upheld by the Director of Public Safety?

24 Q. So you're -- you're recommending three

1 different levels of punishment for the purpose of
2 giving the director choices? I'm just trying to
3 understand how the system works.

4 A. This is a very different kind of a
5 case, because she was a supervisor, and all of the
6 aspects involved in that. But it's the Director
7 of Public Safety's decision on the recommendation
8 that gets to him. And it gets to him if I'm
9 recommending something that involves a suspension
10 or worse.

11 There are some discipline cases where I
12 can offer the officer a leave forfeiture. And if
13 they accept that, it doesn't go to the Director of
14 Public Safety. Otherwise if I recommend
15 suspension, then it always goes to the Director of
16 Public Safety to make the final decision.

17 In this particular case, I made that
18 recommendation thinking that if termination isn't
19 the decision, that it's worthy of a six-week
20 suspension and a demotion, because I thought that
21 the supervisory issues were very relevant to the
22 situation and the charges. You know, if it was --
23 it could have been, you know, just a termination
24 case and sometimes that's all I recommend.

1 Q. Okay. That's what I was trying to
2 understand.

3 A. Yeah.

4 Q. Okay.

5 A. This is an unusual recommendation for
6 me, but I have seen it done before in my previous
7 years as a supervisor. I've been a supervisor
8 since 1987, so in my years in internal affairs and
9 just documents that I've reviewed, I've seen this
10 type of a recommendation before. It's very rare.

11 Q. Okay. Now, just one other area, I
12 believe, not promising, but I believe just one
13 other area.

14 In a situation where you have one
15 officer saying another officer made a threat and
16 the accused officer says, no, I didn't, what do
17 you do? You just write it off? Do you
18 investigate further? What is the -- what is the
19 process?

20 MR. COGLIANESE: Objection. Go ahead.

21 A. Well, first of all, you're asking what
22 I do.

23 Q. Well, I'm -- as chief, I mean, you've
24 investigated cases before, right?

1 MR. COGLIANESE: Objection.

2 A. I have never investigated as an
3 internal affairs investigator. As a sergeant, I
4 did do some chain of command investigations, but
5 they were generally like a use of force
6 investigation. You know, did you use force and
7 how did you use it? I know that I investigated
8 some citizen complaints, a few when I was a
9 sergeant, but this is in the 1980s and early '90,
10 maybe. No, probably not.

11 Q. I thought you supervised IAB for a
12 while?

13 A. Well, I was the commander. I didn't
14 conduct the investigations.

15 Q. But you were consulted about ongoing
16 investigations?

17 A. Absolutely.

18 Q. And you supervised their investigations
19 as needed, right?

20 A. Correct.

21 Q. Okay. Well, based on your experience
22 as an IAB commander, when you have, you know, a he
23 said/he said kind of situation, do you just not
24 pursue it? Or do you -- do you do polygraphs? Do

1 you do some other -- take other steps to see if
2 you can cooperate?

3 A. There are --

4 MR. COGLIANESE: Objection.

5 A. There are a variety of -- of directions
6 that you can go with an allegation that involves
7 he said/he said. Most often if they are committed
8 to a complaint, it's going to go for an
9 investigation. Sometimes that's chain of command,
10 sometimes that's going to be internal affairs. I
11 wouldn't say that writing it off is ever like a
12 given or even a policy.

13 It depends on the he said/he said
14 content, you know, whatever that might be. A lot
15 of those situations, you know, going into it you
16 think, well, it might be not sustained, but we
17 have the gamut from sustained to unfounded when
18 it's he said/he said or she said/he said or
19 whatever. And that depends on the evidence that
20 we're able to uncover.

21 You know, a video makes a huge
22 difference obviously. An admission makes a huge
23 difference, obviously. So it just all depends on
24 what the situation is, but --

1 Q. What about polygraphs?

2 A. Polygraphs are written into the
3 contract with regard to when they can be
4 undertaken. So -- and that's with regard to sworn
5 personnel. And I've kind of been talking about
6 sworn personnel. Civilian investigations are --
7 have different rules. But with regard to the FOP
8 contract, the contract comes right out and says
9 when you can do a polygraph. And that's if
10 there's a criminal aspect to the allegations, and
11 whether or not the accuser or the person making
12 the complaint is willing to take a polygraph and
13 passes, I believe, before we would then make a
14 decision on ordering the involved officer to take
15 a polygraph.

16 Q. In this case, did Sorrell take -- I
17 mean, accusations -- some of the accusations that
18 Sorrell was making were of a criminal nature,
19 right? Theft of money essentially?

20 A. Certainly some of the allegations
21 involved, theft of time or overtime. I can't
22 recall whether we had a discussion about ordering
23 a polygraph for Sorrell or not. Some people see
24 value in that.

1 My -- my history with polygraphs and
2 how it's used and all that is that I often don't
3 find that it's going to create a lot of value to
4 the investigation, and the FOP sometimes turns
5 that around and says, well, you're relying on
6 that, and if you're relying on that, then we have
7 to throw the whole thing out, so...

8 Q. So the rule -- the contract rule is
9 it's got to be criminal and the accuser has to --

10 A. Of a criminal nature, I believe it
11 says.

12 Q. Criminal nature?

13 A. Yeah.

14 Q. I'm sorry. Has to be of a criminal
15 nature or at least potentially --

16 A. Correct.

17 Q. -- a criminal act?

18 And the accuser has to agree to it --
19 to take it?

20 A. I'm pretty sure it says accuser or, you
21 know, the person making the complaint.

22 Q. Complainant or something --

23 A. Yeah. Exactly.

24 Q. -- like that?

1 A. I mean, it's in the contract. It would
2 be better to just go word for word than --

3 Q. The reason I'm asking you this --

4 A. Yeah.

5 Q. -- is there's a document that I've seen
6 where it looks like Sergeant Decker suggested or
7 requested polygraphs, but we can't figure out
8 whether they actually ever happened. Do you know?

9 A. If they happened --

10 Q. Yeah, in this case?

11 A. -- the records should be in the record.

12 Q. Okay. All right.

13 A. Because it would have been a public
14 record and it would have been part of the
15 investigation.

16 Q. Okay. Okay. If you would take a look
17 at Exhibit 38, the big giant one.

18 A. Uh-huh.

19 Q. And look at page 138 --

20 MR. VARDARO: 163.

21 Q. 163. And that's the page --

22 A. Up at the top?

23 Q. -- up at the top, yeah.

24 I would like to point your attention

1 down to the last paragraph on the page.

2 A. Okay.

3 Q. And I'm just going to read it out loud
4 to be -- since it's the basis of a question.

5 Although it is a very close call, and I
6 do not find Sergeant Moore credible, I am
7 unwilling to sustain this allegation without some
8 form of corroboration of Officer Sorrell -- of
9 Officer Sorrell's statement. Therefore I find
10 that the alleged conduct could not be supported or
11 refuted by a preponderance of the evidence. And
12 he recommends not sustained.

13 My question is that: As chief and as a
14 former commander of IAB, is that the general rule
15 that we're -- that you need -- if it's just one
16 witness, and for this purpose since assuming there
17 was only one witness, did you -- is it the rule
18 you have to have other corroboration to sustain a
19 charge?

20 MR. COGLIANESE: Objection.

21 A. There's no rule. I mean, everything is
22 taken based on the information that we have for
23 that thing. I would say when -- when we don't
24 have something that tips the scales, then it's

1 going to be not sustained. It's -- it's just --
2 you can't get there and say that the evidence is
3 sufficient to make it sustained. It's a fine
4 line.

5 And sometimes that just depends on what
6 you think you can prove. Just like, you know,
7 prosecutors don't take all their cases even though
8 probable cause might be there, they might not take
9 it because they don't think they can get to beyond
10 a reasonable doubt. So, you know, it's all about
11 what we think the evidence tells us, and there's
12 always differing opinions about what the evidence
13 says.

14 Q. So the fact that Moore was not credible
15 as Sergeant Decker describes it, and there is
16 someone accusing him, that's not enough without
17 additional corroboration?

18 A. That was Sergeant Decker's decision --

19 Q. Right.

20 A. -- to go that route.

21 Q. Well, but this is just a
22 recommendation, right?

23 A. He makes a recommendation of finding
24 and that's what -- how he --

1 Q. Right.

2 A. -- justified his decision.

3 Q. I'm asking you: Do you view situations
4 like he's describing here the same, that even if
5 you have somebody you don't believe is credible,
6 but you don't feel you have corroboration of some
7 kind, you don't think there should be a charge?

8 A. A finding of sustained.

9 Q. A finding of sustained?

10 A. There's a difference there.

11 Q. Okay. You're right. A finding of
12 sustained.

13 A. Yes, I have to agree that I've been in
14 that same -- same reasoning situation where even
15 though I don't believe necessarily the officer, I
16 don't have enough. I -- I can very clearly
17 remember a case where I thought the officers were
18 very guilty, but I didn't have enough
19 corroboration. They weren't credible, but I
20 didn't have enough corroboration to make a
21 sustained finding. And that's just one case, you
22 know, there's --

23 Q. And -- and in a situation like this
24 where another officer specifically asked Moore

1 about whether he had made this statement and Moore
2 did not deny it, that's not enough to tip the --
3 to tip the scales?

4 MR. COGLIANESE: Objection.

5 A. Well, it wasn't for Sergeant Decker or
6 anyone else that reviewed the information.

7 Q. And you understand that -- let me make
8 it clear, there's a different witness that's not
9 referenced in this little section who in a
10 conversation with Sergeant Decker told him that he
11 had asked him about the allegations, and Moore did
12 not deny it, he just didn't respond?

13 A. Is that included --

14 MR. COGLIANESE: Objection.

15 A. -- in the rest of this?

16 Q. It is included elsewhere in the
17 investigation. Do you think that is pertinent?

18 A. All of it is.

19 Q. Okay. As someone who has investigated
20 some cases, would that have tipped the scale for
21 you had it been discussed in connection with
22 Sorrell and Watkins in this section?

23 MR. COGLIANESE: Objection.

24 A. Well, I didn't change the ruling, so I

1 think that it's clear that I didn't feel that I
2 could sustain the charge.

3 Q. But as far as you recall, you
4 considered this other -- the other witness about
5 Moore --

6 A. I considered --

7 Q. -- not the whole thing?

8 A. -- the information, yeah.

9 Q. Okay. Okay. I think I am finished
10 with my questions. I just want to give you an
11 opportunity if you have anything that you believe
12 sitting here at the moment you need to correct or
13 add to a prior answer, please let us know.

14 A. I can't think of anything in
15 particular.

16 Q. Okay.

17 A. It was a long day.

18 MR. GITTES: I am requesting that you
19 review and read the transcript when it's done up.

20 MR. COGLIANESE: And she'll read.

21 THE WITNESS: I understand.

22 THE VIDEOGRAPHER: This concludes the
23 deposition. We are off the record. The time is
24 4:48.

(Signature not waived.)

- - - - -

Thereupon, the foregoing proceedings
concluded at 4:47 p.m.

- - - - -

1 State of Ohio : C E R T I F I C A T E
2 County of Franklin: SS

3 I, Mary Bradley, RPR, a Notary Public in and
4 for the State of Ohio, certify that Kimberley K.
5 Jacobs was by me duly sworn to testify to the whole
6 truth in the cause aforesaid; testimony then given
7 was reduced to stenotype in the presence of said
8 witness, afterwards transcribed by me; the
9 foregoing is a true record of the testimony so
10 given; and this deposition was taken at the time
11 and place specified on the title page.

12 Pursuant to Rule 30(e) of the Federal Rules of
13 Civil Procedure, the witness and/or the parties
14 have not waived review of the deposition
15 transcript.

16 I certify I am not a relative, employee,
17 attorney or counsel of any of the parties hereto,
18 and further I am not a relative or employee of any
19 attorney or counsel employed by the parties hereto,
20 or financially interested in the action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office at Columbus, Ohio, on
23 June 4, 2019.

24 

Mary Bradley, Notary Public - State of Ohio
My commission expires September 19, 2019.

Witness Errata and Signature Sheet
 Correction or Change Reason Code
 1-Misspelling 2-Word Omitted 3-Wrong Word
 4-Clarification 5-Other (Please explain)

Page/Line	Correction or Change	Reason Code
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I, Kimberley K. Jacobs, have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date_____Signature_____

The witness has failed to sign the deposition within the time allowed.

Date_____Signature_____

Ref: Mb30921kj S-mb P-bw

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